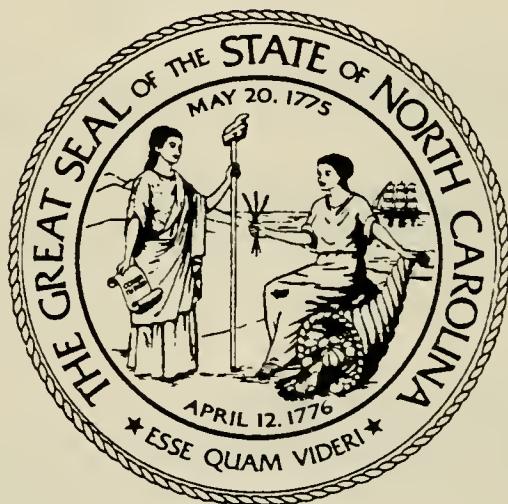


ETHICAL CONSIDERATIONS IN STATE GOVERNMENT



Compiled for the North Carolina General Assembly
by the Research Division
Legislative Services Office
December 1988

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December 30, 1988

MEMORANDUM

TO: Members of the 1989 General Assembly
FROM: Terrence D. Sullivan
RE: Ethical Considerations for the Legislative Branch

The purpose of this booklet is to respond to requests by legislators for information concerning ethical matters binding on them and others in state government. Compiled here are the major ethical considerations coming to bear on the Legislative Branch -- its members and employees, and to a lesser extent, those of other branches of state government.

The booklet is divided into five sections. The first and largest section is devoted to the legislature (white pages). Among the matters contained in that section are the Legislative Ethics Act, a copy of the economic interest statement and the ethical principles and guidelines established by the Legislative Ethics Committee under this Act; 1987 rules of houses of the General Assembly establishing ethical principles; and civil statutes specifying minimum standards of conduct for legislators and legislative employees.

The remainder of this booklet is for your general information and places before you the regulatory structure for ethics for the executive (yellow pages) and judicial (green pages) branches of government; those federal and state civil and criminal statutes establishing minimum general standards of conduct of state officers and employees in their office or employment (blue pages); and portions of the Rules of Professional Conduct of the North Carolina State Bar dealing with attorney-public office holders (pink pages).

December 1988

ETHICAL CONSIDERATIONS

	<u>Page</u>
A. LEGISLATIVE BRANCH	
I. Legislative Ethics Act (G.S. 120-85 <i>et seq.</i>)	
Part 1. Code of Legislative Ethics	1
Part 2. Statement of Economic Interest	2
Part 3. Legislative Ethics Committee	4
II. Legislator's Statement of Economic Interest	7
III. Legislative Principles and Guidelines Adopted by the Legislative Ethics Committee	
Telephone Use	17
Mailing Privileges	17
Copying Privileges	17
Legislator's Use of Legislative Status in Commercial Advertising.....	17
Legislator's Use of Official Stationery in Political Campaigns	17
IV. Rules of Houses of General Assembly Relating to Use of Electronic Voting Equipment, Excuse from Voting, and Absence from Legislative Session	
House	19
Senate.....	21
V. Legislative Manual, January 1989	
Mail Service and Postage	24
Telephone	25
Stationery	27
Fax Machine.....	27
Printing	27
VI. Civil Statutes Specifically Establishing Minimum Standards of Conduct for Legislators and Legislative Employees	
Penalty for Legislators Failing to Discharge Duty (G.S. 120-7)	29
Legislator's Expulsion for Corrupt Practices in Election (G.S. 120-8)	29
Confidentiality of Legislative Communications (G.S. 120-129 <i>et seq.</i>)	29
Certain Public Officials and Legislators Required to Repay Money Owed to State (G.S. 143-552 <i>et seq.</i>)	32

B. EXECUTIVE BRANCH

I. Executive Order Number 1, 1/31/85 creating a North Carolina Board of Ethics	39
II. Statement of Economic Interest Form	47
III. Rules Governing Operation of the North Carolina Board of Ethics	57
IV. Rules Governing State Employees Acceptance of Honorariums	69

C. JUDICIAL BRANCH

I. Code of Judicial Conduct	73
II. Judicial Standards Commission (G.S. 7A-375 <u>et seq.</u>)	87
III. Rules of Judicial Standards Commission	91
IV. Rules for Supreme Court Review of Recommendations of the Judicial Standards Commission	97

D. CIVIL AND CRIMINAL STATUTES ESTABLISHING MINIMUM STANDARDS OF CONDUCT FOR STATE OFFICIALS OR EMPLOYEES GENERALLY IN THEIR OFFICE OR EMPLOYMENT

Punishment for Felonies (G.S. 14-1.1)	101
Punishment of Misdemeanors (G.S. 14-3)	101
Embezzlement of Property Received by Virtue of Office or Employment (G.S. 14-90)	102
Embezzlement of State Property by Public Officers and Employees (G.S. 14-91)	102
Embezzlement of Taxes by Officers (G.S. 14-99)	102
Avoiding or Attempting to Avoid Payment for Telecommunication Services (G.S. 14-113.4 and G.S. 14-113.6)	102
Extortion (G.S. 14-118.4)	103
Bribery of Officials (G.S. 14-217)	103
Buying and Selling Offices (G.S. 14-228)	104
Acting as Officer Before Qualifying as Such (G.S. 14-229)	104
Willfully Failing to Discharge Duties (G.S. 14-230)	104

Failing to Make Reports and Discharge Other Duties (G.S. 14-231)	104
Director of Public Trust Contracting for His Own Benefit (G.S. 14-234).....	105
Misuse of Confidential Information (G.S. 14-234.1)	106
Speculating in Claims Against Towns, Cities and the State (G.S. 14-235)	107
Acting as Agent for those Furnishing Supplies for Schools and Other State Institutions (G.S. 14-236).....	107
Disposing of Public Documents or Refusing to Deliver Them Over to Successor (G.S. 14-241)	107
Failing to Return Process or Making False Return (G.S. 14-242)	108
Private Use of Publicly Owned Vehicle (G.S. 14-247).....	108
Obtaining Repairs and Supplies for Private Vehicle at Expense of State (G.S. 14-248)	108
Violation of [Motor Vehicle Use Statutes] Made Misdemeanor (G.S. 14-251).....	108
Influencing Agents and Servants in Violating Duties Owed Employers (G.S. 14-353)	108
Strikes by Public Employees Prohibited (G.S. 95-98.1, 95-98.2 and 95-99)	110
Appropriate Political Activity of State Employees (G.S. 126-13)	111
Promise or Threat to Obtain Political Contributions or Support (G.S. 126-14, G.S. 126-14.1 and G.S. 126-15)	111
Bargains for Office Void (G.S. 128-3)	113
Receiving Compensation of Subordinates for Appointment or Retention (G.S. 128-4)	113
Gifts and Favors Regulated in Public Contracts (G.S. 133-23 and G.S. 133-32)	114
Malfeasance of Officers and Employees of Department of Transportation. Members of Board of Transportation. Contractors, and Others (G.S. 136-13).....	116
Use of Position by Officers and Employees of Department of Transportation and Members of Board of Transportation to Influence Elections or Political Action (G.S. 136-13.1)	116

Falsifying Highway Inspection Reports (G.S. 136-13.2)	117
Members Not Eligible for Other Employment with Department; No Sales to Department by Employees; Members Not to Sell or Trade Property with Department; Profiting from Official Position (G.S. 136-14)	117
Unauthorized Use of Public Purchases or Contract Purchases for Private Benefit (G.S. 143-58.1)	118
Financial Interest of Officers in Sources of Supply; Acceptance of Bribes (G.S. 143-63)	118
Trading by Interested Officials Forbidden (G.S. 143-113)	119
Diversion of Appropriations to State Institutions (G.S. 143-114 and G.S. 143-115)	119
Unlawful to Pay More Than [Mileage] Allowance (G.S. 147-9)	120
Intimidation of Voters by Officers (G.S. 163-271)	121
Removing Convicted Officials from Office (G.S. 163-276)	121
Federal Legislation:	
The Hatch Act (18 U.S.C. 595).....	122
The Hobbs Act (18 U.S.C. 1951)	125
E. PORTIONS OF THE RULES OF PROFESSIONAL CONDUCT OF THE NORTH CAROLINA STATE BAR DEALING WITH ATTORNEY-PUBLIC OFFICE HOLDERS	129

CHAPTER 120.

GENERAL ASSEMBLY.

ARTICLE 14.

Legislative Ethics Act.

PART 1. Code of Legislative Ethics.

§120-85. Definitions.

As used in this Article:

(1) "Business with which he is associated" means any enterprise, incorporated or otherwise, doing business in the State of which the legislator or any member of his immediate household is a director, officer, owner, partner, employee, or of which the legislator and his immediate household, either singularly or collectively, is a holder of securities worth five thousand dollars (\$5,000) or more at fair market value as of December 31 of the preceding year, or constituting five percent (5%) or more of the outstanding stock of such enterprise.

(2) "Immediate household" means the legislator, his spouse, and all dependent children of the legislator.

(3) "Vested trust" as set forth in G.S. 120-96(4) means any trust, annuity or other funds held by a trustee or other third party for the benefit of the member or a member of his immediate household. (1975, c. 564, s. 1.)

§120-86. Bribery, etc.

(a) No person shall offer or give to a legislator or a member of a legislator's immediate household, or to a business with which he is associated, and no legislator shall solicit or receive, anything of monetary value, including a gift, favor or service or a promise of future employment, based on any understanding that such legislator's vote, official actions or judgment would be influenced thereby, or where it could reasonably be inferred that the thing of value would influence the legislator in the discharge of his duties.

(b) It shall be unlawful for the partner, client, customer, or employer of a legislator or the agent of that partner, client, customer, or employer to threaten economically, directly or indirectly, that legislator with the intent to influence the legislator in the discharge of his legislative duties.

(c) It shall be unethical for a legislator to contact the partner, client, customer, or employer of another legislator if the purpose of the contact is to cause the partner, client, customer, or employer to threaten economically, directly or indirectly, that legislator with the intent to influence that legislator in the discharge of his legislative duties.

(d) For the purposes of this section, the term "legislator" also includes any person who has been elected or appointed to the General Assembly but who has not yet taken the oath of office.

(e) Violation of subsection (a) or (b) is a Class I felony. Violation of subsection (c) is not a crime but is punishable under G.S. 120-103. (1975, c. 564, s. 1; 1983, c. 780, s. 2.)

§ 120-87. Disclosure of confidential information.

No legislator shall use or disclose confidential information gained in the course of or by reason of his official position or activities in any way that could result in financial gain for himself, a business with which he is associated or a member of his immediate household or any other person. (1975, c. 564, s. 1.)

§ 120-88. When legislator to disqualify himself or submit question to Legislative Ethics Committee.

When a legislator must act on a legislative matter as to which he has an economic interest, personal, family, or client, he shall consider whether his judgment will be substantially influenced by the interest, and consider the need for his particular contribution, such as special knowledge of the subject matter, to the effective functioning of the legislature. If after considering these factors the legislator concludes that an actual economic interest does exist which would impair his independence of judgment, then he shall not take any action to further the economic interest, and shall ask that he be excused, if necessary, by the presiding officer in accordance with the rules of the respective body. If the legislator has a material doubt as to whether he should act, he may submit the question to the Legislative Ethics Committee for an advisory opinion in accordance with G.S. 120-104. (1975, c. 564, s. 1.)

PART 2. Statement of Economic Interest.

§ 120-89. Statement of economic interest by legislative candidates; filing required.

Every person who files as a candidate for nomination or election to a seat in either house of the General Assembly shall file a statement of economic interest as specified in this Article within 10 days of the filing deadline for the office he seeks. (1975, c. 564, s. 1.)

§ 120-90. Place and manner of filing.

The statement of economic interest shall cover the preceding calendar year and shall be filed at the same place, and in the same manner, as the notice of candidacy which a candidate seeking party nomination for the office of State Senator or member of the State House of Representatives is required to file under the provisions of G.S. 163-106. (1975, c. 564, s. 1.)

§ 120-91. Repealed by Session Laws 1987 (Reg. Sess., 1988), c. 1028, s. 3. (1987).

§ 120-92. Filing by candidates not nominated in primary elections.

A person who is nominated pursuant to the provisions of G.S. 163-114 after the primary and before the general election, and a person who qualifies pursuant to the provisions of G.S. 163-122 as an independent candidate in a general election shall file with the county board of elections of each county in the senatorial or representative district a statement of economic interest. A person nominated pursuant to G.S. 163-114 shall file the statement within three days following his nomination, or not later than the day preceding the general election, whichever occurs first. A person seeking to qualify as an independent candidate under G.S. 163-122 shall file the statement of economic interest with the petition filed pursuant to that section.

§ 120-93. County boards of elections to notify candidates of economic-interest-statement requirements.--Each county board of elections shall provide for notification of the economic-interest-statement requirements of

G.S. 120-89, 120-96, and 120-98 to be given to any candidate filing for nomination or election to the General Assembly at the time of his or her filing in the particular county.

§120-94. Statements of economic interest are public records.

The statements of economic interest are public records and shall be made available for inspection and copying by any person during normal business hours at the office of the various county boards of election where the statements or copies thereof are filed. If a county board of elections of a county does not keep an office open during normal business hours each day, that board shall deliver a copy of all statements of economic interest filed with it to the clerk of superior court of the county, and the statements shall be available for inspection and copying by any person during normal business hours at that clerk's office. (1975, c. 564, s. 1.)

§120-95. Repealed by Session Laws 1987 (Reg. Sess., 1988), c. 1028, s. 3, effective January 1, 1989.

§120-96. Contents of statement.

Any statement of economic interest filed under this Article shall be on a form prescribed by the Committee, and the person filing the statement shall supply the following information:

(1) The identity, by name, of any business with which he, or any member of his immediate household, is associated;

(2) The character and location of all real estate of a fair market value in excess of five thousand dollars (\$5,000), other than his personal residence (curtilage), in the State in which he, or a member of his immediate household, has any beneficial interest, including an option to buy and a lease for 10 years or over;

(3) The type of each creditor to whom he, or a member of his immediate household, owes money, except indebtedness secured by lien upon his personal residence only, in excess of five thousand dollars (\$5,000);

(4) The name of each "vested trust" in which he or a member of his immediate household has a financial interest in excess of five thousand dollars (\$5,000) and the nature of such interest;

(5) The name and nature of his and his immediate household member's respective business or profession or employer and the types of customers and types of clientele served;

(6) A list of businesses with which he is associated that do business with the State, and a brief description of the nature of such business;

(7) In the case of professional persons and associations, a list of classifications of business clients which classes were charged or paid two thousand five hundred dollars (\$2,500) or more during the previous calendar year for professional services rendered by him, his firm or partnership. This list need not include the name of the client but shall list the type of the business of each such client or class of client, and brief description of the nature of the services rendered. (1975, c. 564, s. 1.)

§120-97. Repealed by Session Laws 1987 (Reg. Sess., 1988), c. 1028, s. 3, effective January 1, 1989.

§120-98. Penalty for failure to file.

(a) If a candidate does not file the statement of economic interest within the time required by this Article, the county board of elections shall immediately serve notice on the candidate by registered mail, restricted

delivery to addressee only, that, if the statement is not received within 15 days after receiving notice, the candidate shall not be certified as the nominee of his party. If the statement is not received within 15 days of notification, the board of elections authorized to certify a candidate as nominee to the office shall not certify the candidate as nominee under any circumstances, regardless of the number of candidates for the nomination and regardless of the number of votes the candidate receives in the primary. A vacancy thus created on a party's ticket shall be considered a vacancy for the purposes of G.S. 163-114, and shall be filled according to the procedures set out in G.S. 163-114. (1987 (Reg. Sess., 1988), c. 1028, s. 4.)

(b) Repealed by Session Laws 1987 (Reg. Sess., 1988), c. 1028, s. 5, effective January 1, 1989.

PART 3. Legislative Ethics Committee.

§120-99. Creation; composition.

The Legislative Ethics Committee is created to consist of a chairman and eight members, four Senators appointed by the President of the Senate, two from a list of four submitted by the Majority Leader and two from a list of four submitted by the Minority Leader, and four members of the House of Representatives appointed by the Speaker of the House, two from a list of four submitted by the Majority Leader and two from a list of four submitted by the Minority Leader.

The President of the Senate shall designate a member of the General Assembly as chairman of the Committee in odd-numbered years, and the Speaker of the House shall designate a member of the General Assembly as chairman of the Committee in even-numbered years. The chairman will vote only in the event of a tie vote.

The provisions of G.S. 120-19.1 through G.S. 120-19.8 shall apply to the proceedings of the Legislative Ethics Committee as if it were a joint committee of the General Assembly, except that the chairman shall sign all subpoenas on behalf of the Committee. (1975, c. 564, s. 1; 1985, c. 790, s. 6.)

§120-100. Term of office; vacancies.

Initial members of the Legislative Ethics Committee shall be appointed as soon as practicable after the ratification of this Article and shall serve until the expiration of their current terms as members of the General Assembly. Thereafter, appointments shall be made immediately after the convening of the regular session of the General Assembly in odd-numbered years, and appointees shall serve until the expiration of their then-current terms as members of the General Assembly. The chairman shall serve for one year and shall be appointed each year. A vacancy occurring for any reason during a term shall be filled for the unexpired term by the authority making the appointment which caused the vacancy, and the person appointed to fill the vacancy shall, if possible, be a member of the same political party as the member who caused the vacancy. (1975, c. 564, s. 1.)

§120-101. Quorum; expenses of members.

Five members constitute a quorum of the Committee. A vacancy on the Committee does not impair the right of the remaining members to exercise all the powers of the Committee.

The chairman and members of the Committee, while serving on the business of the Committee, are performing legislative duties and are entitled to the subsistence and travel allowances to which members of the General Assembly are entitled when performing legislative duties. (1975, c. 564, s. 1.)

§120-102. Powers and duties of Committee.

In addition to the other powers and duties specified in this Article, the Committee has the following powers and duties:

(1) To prescribe forms for the statements of economic interest and other reports required by this Article, and to furnish these forms to persons who are required to file statements or reports.

(2) To receive and file any information voluntarily supplied that exceeds the requirements of this Article.

(3) To organize in a reasonable manner statements and reports filed with it and to make these statements and reports available for public inspection and copying during regular office hours. Copying facilities shall be made available at a charge not to exceed actual cost.

(4) To preserve statements and reports filed with the Committee for a period of 10 years from the date of receipt. At the end of the 10-year period, these documents shall be destroyed.

(5) To prepare a list of ethical principles and guidelines to be used by each legislator in determining his role in supporting or opposing specific types of legislation, and to advise each General Assembly committee of specific danger areas where conflict of interest may exist and to suggest rules of conduct that should be adhered to by committee members in order to avoid conflict.

(6) To advise General Assembly committees, at the request of a committee chairman, or at the request of three members of a committee, about possible points of conflict and suggested standards of conduct of committee members in the consideration of specific bills or groups of bills.

(7) To suggest to legislators activities which should be avoided.

(8) Upon receipt of information that a legislator owes money to the State and is delinquent in making repayment of such obligation, to investigate and dispose of the matter according to the terms of this Article. (1975, c. 564, s. 1; 1979, c. 864, s. 3.)

§120-103. Possible violations; procedures; disposition.

(a) Institution of Proceedings. -- On its own motion, or in response to signed and sworn complaint of any individual filed with the Committee, the Committee shall inquire into any alleged violation of any provision of this Article.

(b) Notice and Hearing. -- If, after such preliminary investigation as it may make, the Committee determines to proceed with an inquiry into the conduct of any individual, the Committee shall notify the individual as to the fact of the inquiry and the charges against him and shall schedule one or more hearings on the matter. The individual shall have the right to present evidence, cross-examine witnesses, and be represented by counsel at any hearings. The Committee may, in its discretion, hold hearings in closed session; however, the individual whose conduct is under inquiry may, by written demand filed with the Committee, require that all hearings before the Committee concerning him be public or in closed session.

(c) Subpoenas. -- The Committee may issue subpoenas to compel the attendance of witnesses or the production of documents, books or other records. The Committee may apply to the superior court to compel obedience to the subpoenas of the Committee. Notwithstanding any other provision of law, every State agency, local governmental agency, and units and subdivisions thereof shall make available to the Committee any documents, records, data, statements or other information, except tax returns or information relating thereto, which the Committee designates as being necessary for the exercise of its powers and duties.

(d) Disposition of Cases. -- When the Committee has concluded its inquiries into alleged violations, the Committee may dispose of the matter in one or more of the following ways:

- (1) The Committee may dismiss the complaint and take no further action. In such case the Committee shall retain its records and findings in confidence unless the individual under inquiry requests in writing that the records and findings be made public.
- (2) The Committee may, if it finds substantial evidence that a criminal statute has been violated, refer the matter to the Attorney General for possible prosecution through appropriate channels.
- (3) The Committee may refer the matter to the appropriate House of the General Assembly for appropriate action. That House may, if it finds the member guilty of unethical conduct as defined in this Article, censure, suspend or expel the member. (1975, c. 564, s. 1.; 1987, c. 439, s. 1.)

§120-104. Advisory opinions.

At the request of any member of the General Assembly, the Committee shall render advisory opinions on specific questions involving legislative ethics. These advisory opinions, edited as necessary to protect the identity of the legislator requesting the opinion, shall be published periodically by the Committee. (1975, c. 564, s. 1.)

§120-105. Continuing study of ethical questions.

The Committee shall conduct continuing studies of questions of legislative ethics including revisions and improvements of this Article as well as sections to cover the administrative branch of government and shall report to the General Assembly from time to time recommendations for amendments to the statutes and legislative rules which the Committee deems desirable in promoting, maintaining and effectuating high standards of ethics in the legislative branch of State government. (1975, c. 564, s. 1.)

§120-106. Article applicable to presiding officers.

The provisions of this Article shall apply to the presiding officers of the General Assembly. (1975, c. 564, s. 2.)

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE SERVICES OFFICE
2129 STATE LEGISLATIVE BUILDING
RALEIGH 27611-9184

GEORGE R. HALL, JR.
LEGISLATIVE ADMINISTRATIVE OFFICER

LEGISLATIVE SERVICES OFFICE
TELEPHONE: 733-7044

December 11, 1987

MEMORANDUM

TO: All North Carolina Elections Boards

FROM: George R. Hall, Jr. *bba*
Legislative Administrative Officer

SUBJECT: Forms for Statement of Economic Interest to be
Filed by Candidates for Seats in the General
Assembly

Enclosed are copies of the Statement of Economic
Interest forms which each candidate for nomination to a seat
in the General Assembly is required to file with the
appropriate county board of elections.

If you require additional forms, please notify this
office.

GRH:bba

Enclosures

STATEMENT OF ECONOMIC INTEREST

CANDIDATES FOR THE GENERAL ASSEMBLY OF NORTH CAROLINA

Name of Candidate _____

Home Address _____

Legislative Seat Sought: Senate District _____

House District _____

Every candidate for the 1989 General Assembly of North Carolina, however selected, must file this statement with the County Boards of Elections.

PART I

NAMES AND OCCUPATIONS OF CANDIDATE AND MEMBERS OF IMMEDIATE HOUSEHOLD

List below your name, spouse's name, and the names of all children claimed by you as dependents for Federal Income Tax purposes.

NAME	EMPLOYER	NATURE OF BUSINESS OR PROFESSION	TYPE OF CUSTOMERS OR CLIENTELE SERVED
Candidate			
Spouse			
Dependent (Child)ren			

PART II

BUSINESSES WITH WHICH ASSOCIATED

For purposes of this Part, in determining whether or not an enterprise is doing business in North Carolina, you may rely upon the list and latest supplement of Taxable Percentages For N.C. Income and Intangibles Tax Purposes issued by the N.C. Department of Revenue, Intangibles Tax Division, Raleigh, N.C. 27602. An unincorporated enterprise is doing business in North Carolina if it maintains a place of business in the state or has assigned representatives who regularly solicit business in the state.

List below every business enterprise, incorporated or otherwise, doing business in North Carolina of which you, your spouse, or dependent child

A. is a director, officer, owner, partner or employee (do not list in Section A ownership of stock; stock ownership should be reported in Sections B and C of this Part)

<u>Individual</u> [Candidate, Spouse or Dependent Child]	<u>Name of Business</u>	<u>Type of Association</u> [Director, Officer, etc. If more than one type of association exists, list all that apply]			

B. individually or collectively own as of the time of the filing of this report stocks, bonds or debentures of any type worth \$5,000 or more at fair market value as of December 31, 1987.

<u>Individual</u>	<u>Name of Business</u>

C. individually or collectively own more than 5% of the total stock outstanding

<u>Individual (s) owning stock</u>	<u>Name of Business</u>

PART III

BUSINESS WITH THE STATE

List below any of the enterprises listed in Part II which you know or have reason to believe does business with the State of North Carolina. For purposes of this Part, an enterprise does business with the State if:

- (1) It provides, or seeks to provide, services or equipment, materials or supplies to the State or one of its departments, agencies or institutions on a regular, continuing or periodic basis; or
- (2) It is listed by the Office of Purchase and Contract, N.C. Department of Administration, as a source of equipment, materials and supplies under "State Contract"; or
- (3) It produces, manufactures or distributes equipment, materials or supplies intended ultimately for State Government consumption, even though it makes no sales directly to the State. Incidental retail sales on a "walk-in" basis to State agencies, institutions and departments, does not constitute doing business with the State.

Name of Business	<u>Nature of Business Done with State</u>

PART IV

REAL ESTATE INTERESTS

List below all real estate, other than your personal residence, located in North Carolina, having a fair market value in excess of \$5,000 in which you, your spouse or dependent child has any beneficial interest (including an option to buy or a lease for 10 years or longer.) If your personal residence is part of a larger tract such as a farm, exclude the residence and that part of the surrounding land used for family purposes (lawn, garden, garage, etc.) and then list the remainder of the tract.

PART V
CREDITORS

List below the type of each creditor to whom you, your spouse, or dependent child owes more than \$5,000. Do not list indebtedness secured by lien on your personal residence only. Describe creditor by type, not by name.

<u>Type of Creditor</u> (Commercial Bank, Individual, Credit Union, etc.)	<u>Individual Debtor</u> (Candidate, Spouse, Dependent Child)

PART VI
VESTED TRUST

List below the name of each vested trust, including profit-sharing trusts and retirement trusts of any type, in which you, your spouse, or dependent child has a financial interest in excess of \$5,000.

<u>Name of Trust or Trustee</u>	<u>Individual Having Interest</u> (Candidate, Spouse, Dependent Child)

PART VII

PROFESSIONAL CLIENTS

If you derive income from the practice of a profession, either individually or as a member of a professional association, list below the clients; (e.g., insurance companies, public utilities, financial institutions) by type of business, whom you charged or who paid you, your firm or partnership \$2,500 or more for services rendered during the calendar year 1987. Identification by type of business is sufficient; you need not identify clients by name.

<u>Client Described by Type of Business</u>	<u>Nature of Services Rendered</u> [e.g., trials, lobbying, General Counsel, Retainer, title work, probate, etc.]

I certify that I have examined carefully the information contained in this report, and that it is true and complete to the best of my knowledge and belief.

This _____ day of _____, 19_____.
(Handwritten signature)

LEGISLATIVE ETHICAL PRINCIPLES & GUIDELINES

**Adopted by the Legislative Ethics Committee
Pursuant to G.S. 120-102**

Telephone Use.

"It is inappropriate to excessively use the State Telephone Network for personal and business reasons. It shall be used primarily for legislative purposes rather than personal and business purposes." (Adopted April 17, 1985, amended April 30, 1985)

Mailing Privileges.

"A legislator shall not use his mailing privileges to mail personal or non-legislative business-related correspondence." (Adopted April 19, 1985, amended April 30, 1985)

Copying Privileges.

"A legislator shall not copy or have copied non-legislative materials using State equipment in the Legislative Printing Office; provided that a legislator may copy non-legislative materials on the duplicating machines if he or she reimburses the Legislative Disbursing Office for the cost of that duplication." (Adopted April 19, 1985, amended April 30, 1985)

Legislator's Use of Legislative Status in Commercial Advertising.

"A legislator mentioning or permitting another to mention the legislative office he or she holds in commercial advertising would improperly take advantage of the confidence and respect accorded that office and that action would therefore be unethical." (Adopted April 19, 1985, amended April 30, 1985)

Legislator's Use of Official Stationery in Political Campaigns.

"It is inappropriate for any legislator to use or allow another to use his official legislative stationery paid for by the State for soliciting campaign contributions to or thanking contributors to the legislator's political campaign. A legislator may use a facsimile of the legislator's official legislative stationery in soliciting campaign contributions or thanking contributors to the legislator's political campaign if it is paid for by other than State funds and if it bears a clear disclaimer that indicates the stationery was not printed or mailed at State expense." (Adopted March 24, 1986)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1987

H

Simple
Resolution
Adopted

HOUSE RESOLUTION 6
Adopted 3/10/87

Sponsors: Representative

Referred to: Rules and Operation of the House.

February 11, 1987

1 A HOUSE RESOLUTION ADOPTING THE PERMANENT RULES OF THE 1987
2 SESSION OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES.

3 Be it resolved by the House of Representatives:

4 Section 1. The permanent rules of the 1987 Session shall read as follows:

5 RULES OF THE 1987 HOUSE OF REPRESENTATIVES

6 GENERAL ASSEMBLY OF NORTH CAROLINA

7 ...

8
9
10 IV. Voting

11
12 RULE 20. Use of Electronic Voting System.--

13 ...

14 (d) The voting station at each member's desk in the Chamber shall be
15 used only by the member to which the station is assigned. Under no circumstances
16 shall any other person vote at a member's station. It is a breach of the ethical
17 obligation of a member either to request that another person vote at the requesting
18 member's station, or to vote at another member's station. The Speaker shall enforce
19 this rule without exception.

20

RULE 24.1A. Excuse From Deliberations and Voting on a Bill.--(a)

4 Any member shall upon request be excused from the deliberations and voting on a
5 particular bill, but to do so must make that request after the second reading of the
6 bill and before any motion or vote on the bill or any amendment thereto. If the
7 reason for the request arises at some point later in the proceedings, the request may
8 be made at that time.

13 (c) The member so excused shall not debate the bill or any amendment to
14 the bill, vote on the bill, offer or vote on any amendment to the bill, or offer or vote
15 on any motion concerning the bill at that reading, any subsequent reading, or any
16 subsequent consideration of the bill.

17 (d) A member may request that his excuse from deliberations on a
18 particular bill be withdrawn.

19
20 . . .

IX. General Rules

24 **RULE 54. Attendance of Members.**--No member or officer of the House
25 shall absent himself from the service of the House without leave, unless from sickness
26 or disability.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1987

S

Simple
Resolution
Adopted

SENATE RESOLUTION 13

Adopted 3/31/87

Sponsors: Senator

Referred to: Rules and Operation of the Senate.

February 11, 1987

1 A SENATE RESOLUTION ADOPTING THE PERMANENT RULES OF THE
2 SENATE FOR THE 1987 SESSION OF THE GENERAL ASSEMBLY OF
3 NORTH CAROLINA.

4 Be it resolved by the Senate:

5 Section 1. The permanent rules for the 1987 Session are as follows:

6 PERMANENT RULES OF THE 1987 SENATE
7 GENERAL ASSEMBLY OF NORTH CAROLINA

8 . . .

9
10
11 IV. Voting

12
13 RULE 25. Use of electronic voting system.--

14 . . .

15 (d) The voting station at each Senator's desk in the Chamber shall be used only
16 by the Senator to which the station is assigned. Under no circumstances shall any
17 other person vote at a Senator's station. It is a breach of the ethical obligation of a
18 Senator either to request that another vote at the requesting Senator's station, or to

1 vote at another Senator's station. The Chair shall enforce this rule without
2 exception.

3

4

...

5

6 **RULE 29. Duty to vote; excuses.**--(a) Every Senator who is within the
7 bar of the Senate when the question is stated by the Chair shall vote thereon unless
8 he is excused by the Senate. The bar of the Senate shall include the entire Senate
9 Chamber.

10 (b) Any Senator may request to be excused from voting, either immediately
11 before or after the vote has been called for and before a *viva voce* vote result has
12 been announced or before the electronic voting system has been unlocked. The
13 Senator may make a brief statement of the reasons for making such request, and shall
14 send forward to the Principal Clerk, on a form provided by the Clerk, a concise
15 statement of the reason for the request, and the Clerk shall include this statement in
16 the Journal. The question on granting of the request shall be taken without debate.

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VIII. General Rules

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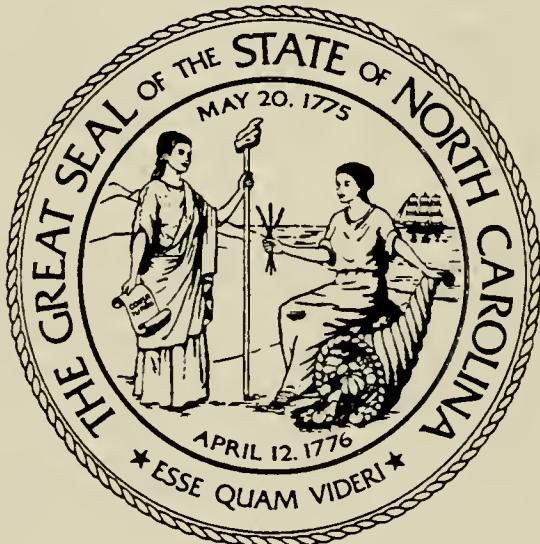
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21

22 **RULE 70. Absence without leave.**--No Senator or officer of the Senate
23 shall depart the service of the Senate without leave, or receive pay as a Senator or
24 officer for the time he is absent without leave.

GENERAL ASSEMBLY
of
NORTH CAROLINA

LEGISLATIVE MANUAL



LEGISLATIVE SERVICES OFFICE
2129 STATE LEGISLATIVE BUILDING
RALEIGH, NORTH CAROLINA 27611
PHONE: (919) 733-7044
JANUARY, 1989

MAIL SERVICE AND POSTAGE

The Legislative Mail Rooms are located in Room 2 in the basement of the State Legislative Building and Room 102 in the Legislative Office Building. The service window in the Mail Room is manned from 8:30 a.m. to 5:30 p.m. daily.

Incoming Mail: The Mail Rooms are equipped with post office type mailboxes, one of which is assigned to each legislator. Incoming mail is not delivered to individual offices but is placed in the legislator's box. Once permanent office assignments have been made, legislators will be given the number and combination of their mailbox by the Mail Room Supervisor.

Outgoing Mail: Outgoing mail must be bundled with the Legislator's Postage Authorization slip. This Authorization slip bears the name of the legislator, clerk or secretary, date, number of pieces of mail, and the legislator's assigned postage account number. Outgoing mail may be deposited in the Mail Rooms or in collection centers maintained in Room 2125 and in Room 2225 on the second floor of the State Legislative Building.

Legislators may have printed materials placed in other legislators' mailboxes only if each piece of the material is designated as coming from a legislator.

Postage: Postage on outgoing official mail is paid from General Assembly funds. A postage meter interfaced to an electronic accounting system is used. Effective January 1, 1989, each legislator is allowed a combined total of \$1500 for his two-year term for long-distance telephone charges and postage used for member's official legislative business. There is no limit on the number of pieces mailed of cost per piece; however, once a member has used his combined allowance for his two-year term, our Disbursing Office will begin billing him for postage. Allowances not used are not transferable to another legislator's account and are not transferable to a member's next two-year term upon re-election. The last paycheck of a member's two-year term will be held until all bills are paid for expenses exceeding the combined long-distance telephone and postage allowance.

Personal mail of both the legislator and his clerk or secretary should be stamped. Stamps may be purchased at the service window at the Mail Rooms.

When an unstamped envelope bearing a legislator's name and accompanied by an authorization slip is deposited in one of the collection locations for outgoing mail, the legislator thereby certifies that the envelope contains official legislative business.

Returned Mail: A substantial number of letters are returned to the Mail Rooms by the United States Post Office, frequently marked "Address Unknown", or with some similar notation. This mail will be returned to the sender by placing it in his box.

Registered Mail and Certified Mail: By arrangement with the U.S. Post Office, the Mail Rooms pick up registered and certified mail. A notice of such mail is placed in the legislator's box and delivery is made at the service window.

Interim Mail: Between sessions, first-class mail is forwarded to legislators home addresses. Other mail is placed in the individual legislator's Mail Room mailbox to be picked up by the legislator whenever he/she happens to be in Raleigh.

Interim Postage: Legislators are expected to use their combined postage and long-distance telephone allowance to pay postage for any individual mailings during an interim period. Clerks for interim legislative committees who prepare mailings from Raleigh will transit the material to the Mail Rooms where it will be processed through a postage meter and charged to the appropriate Committee account.

Express Mail Service: Legislators on occasion request materials be sent to them by staff via Federal Express, UPS, USPS Express Mail, etc. in order to insure next-day delivery. Materials can be mailed in this manner; however, legislators will be billed by our Disbursing Office for the costs incurred for expedited mail.

TELEPHONE

Each legislator has a private telephone on his desk in his legislative office. This telephone may be reached by dialing an individual number. In addition, during the session Southern Bell maintains a telephone switchboard center in the State Legislative Building just off the House side of the second-floor rotunda next to the chapel. The telephone number of this center is (919) 733-4111. The center is operated during normal business hours. Incoming calls to the center number reach a switchboard which will ring the legislator's office and will take and deliver messages if the office telephone does not answer. Calls to the legislator's individual private number do not go through the telephone center switchboard.

A telephone room has been established in the Legislative Office Building in Room 642 for the exclusive use of legislators. There are two telephones in this room which can be used for toll-free local calls.

Local Service: The charges for local service to the individual legislator's office telephone are paid by the General Assembly. This service is provided on a continuing basis throughout the biennial session. [See "Telephone Service During Interim Periods" page 26.]

Long-Distance Service: Each legislator's office telephone is connected to the State Telephone Network (STN). Long-distance rates for calls made over this network are about 40% of the regular commercial rate for the average in-State long-distance call. The STN rate is the same for calls to all points in North Carolina, regardless of the distance from Raleigh. Thus, it is possible to give each legislator the identical long-distance allowance and thereby assure that each has available the same long-distance time at the expense of the General Assembly.

Effective January 1, 1989, each legislator is allowed a combined total of \$1500 for his two-year term for long-distance telephone charges and postage used for member's official legislative business. All long-distance calls made from a member's Legislative Building/Legislative Office Building office phone and calls made using the State Network Credit Card will be charged against the allowance. Members exceeding the combined allowance will be billed for the amount over the allowance. Allowances not used are not transferable to another legislator's account and are not transferable to a member's next two-

year upon re-election. The Legislative Administrative Officer has been directed not to make such transfers, and the Legislative Services Commission requests that legislators not apply for such transfers. The last paycheck of a member's two-year term will be held until all bills are paid for expenses exceeding the combined long-distance telephone and postage allowance.

Long-distance bills are paid in the first instance by the General Services Division of the Department of Administration. The Legislative Services Office then reimburses the General Services Division and sends to each legislator a monthly statement showing calls made on his phone and the charges made against his allowance. If the legislator does not exceed his combined allowance for his two-year term, the account is closed at the end of the year and the legislator owes nothing. If the charges exceed the combined long-distance telephone and postage allowance, the Services Office bills the legislator for the excess.

In using the State Telephone Network, certain important points should be kept in mind.

1. STN billing is different from ordinary commercial WATS line billing. All calls on STN are billed to the calling phone. If a legislator allows his office phone to be used for any long distance calls except on his legislative business, the legislator's allowance for business purposes is reduced accordingly. The idea that this is a WATS line, and that it makes no difference how many calls are made over it, is erroneous.
2. A legislator may make long-distance calls from his hotel room or other location and may charge the calls to his office phone, but the charges for such calls will be made by the telephone company at the regular commercial rate and not at the reduced STN rate.
3. The reduced STN rate is possible because the Department of Administration leases only as many long-distance lines as are necessary to give reasonably adequate service at peak hours without having a great many idle lines during periods of minimal use. Use by the permanent agencies of State Government follows a predictable and relatively even pattern. Legislative use patterns are more variable and less predictable. Normal peak hours of the existing STN pattern occur between 9:00 and 11:30 a.m. and between 2:00 and 4:00 p.m. If temporary inconvenience caused by peak period overload of the STN develops, legislators can cooperate in reducing the problem by placing their calls, when possible, outside these peak hours.

Telephone Service During Interim Periods: The telephone in an individual legislator's private office remains connected while the General Assembly is not in session. The charge for local service is paid by the General Assembly. Long-distance calls made by the legislator from his office telephone during these interim periods will be charged against the legislator's long-distance telephone allowance [See "Long-Distance Service" page 25.]

Calls to State Offices in Raleigh from Legislator's Home Area: Each legislator is issued a State Telephone Network (STN) card which allows him the advantage of the low STN long-distance rates when calling anywhere in the continental United States. All charges made on the STN card will be charged against the legislator's combined postage and long-distance telephone allowance [See "Long-Distance Service" page 25.] In order to use this service the legislator must follow the instructions printed on the STN card. The legislator should not dial the regular long-distance operator; attempts to use

the STN card through regular commercial long-distance procedures will fail. There are a few areas of the State in which the STN card service is not yet available, but the service is being constantly expanded and it will soon be available in the few legislators' home areas not currently served.

STATIONERY

Each legislator will be provided with up to 4,000 sheets of stationery and 4,000 envelopes at State expense. This allotment is for the full two-year term. If a legislator requires more than the allotment, the Legislative Services Office will order additional stationery and will bill the legislator for the excess. The 4,000 sheets of stationery may be any combination of bond and onionskin letterheads requested by the legislator.

When new legislators arrive at the beginning of the session they are provided with 500 sheets of bond letterhead bearing the Senate or House designation and the legislator's name, district, and home address. Envelopes showing Senate or House designation and the legislator's name are also provided.

As soon as committee appointments have been completed, each legislator should have his clerk prepare and bring to the Disbursing Office a sample of his letterhead showing Senate or House designation, legislator's district and home address, and committee assignments. The Disbursing Office will then order letterhead and envelopes. Further orders for stationery will be placed upon request of the legislator. Requests may be made directly to the Disbursing Office in Room 5 of the State Legislative Building.

The N.C. General Assembly does not furnish engraved letterhead.

As directed by the Legislative Ethics Committee "it is inappropriate for any legislator to use or allow another to use his official legislative stationery paid for by the State for soliciting campaign contributions to or thanking contributors to the legislator's political campaign. A legislator may use a facsimile of the legislator's official legislative stationery in soliciting campaign contributions or thanking contributors to the legislator's political campaign if it is paid for by other than State funds and if it bears a clear disclaimer that indicates the stationery was not printed or mailed at State expense."

FACSIMILE MACHINE (FAX)

There is a FAX machine located in the Legislative Automated Systems Division, Room 400 Legislative Office Building, for the use of General Assembly members. Telephone line charges for the use of the FAX machine will be charged to the using member's telephone allowance.

To send a document call 733-6834 to schedule use of the FAX machine. A legislator or his secretary should be present at the time of transmission to receive a confirmation of the transmission. If a member receives documents over the FAX, there is no charge and the member will be notified of the receipt of the document by the Legislative Automated Systems Division. The number of the FAX machine is 919-733-3113.

PRINT SHOP AND COPYING MACHINES

The Print Shop is located in Room 107 of the Legislative Office Building. Legislators and their clerks should use the Print Shop when they need 20 or more copies. The Print Shop should be used for copying official legislative materials only (no personal printing, i.e. letters to constituents, newsletters, invitations, etc.).

For less than 20 copies legislators and their clerks should use the copying machines located in Room 618 in the Legislative Office Building or on the second floor of the State Legislative Building. Operators are there to assist you.

CHAPTER 120.

GENERAL ASSEMBLY.

ARTICLE 2.

Duty and Privilege of Members.

§120-7. Penalty for failure to discharge duty.

If any member shall fail to appear, or shall neglect to attend to the duties of his office, he shall forfeit and pay for not appearing ten dollars (\$10.00), and two dollars (\$2.00) for every day he may be absent from his duties during the session, to be deducted from his pay as a member; but a majority of the members of either house of the General Assembly may remit such fines and forfeitures, or any part thereof, where it shall appear that such member has been prevented from attending to his duties by sickness or other sufficient cause. (1787, c. 277, s. 2, P.R.; R.C., c. 52, s. 28; Code, s. 2848; Rev., s. 4402; C.S., s. 6091.)

§120-8. Expulsion for corrupt practices in election.

If any person elected a member of the General Assembly shall by himself or any other person, directly or indirectly, give, or cause to be given, any money, property, reward or present whatsoever, or give, or cause to be given by himself or another, any treat or entertainment of meat or drink, at any public meeting or collection of the people, to any person for his vote or to influence him in his election, such person shall, on due proof, be expelled from his seat in the General Assembly. (1801, c. 580, s. 2, P.R.; R.C., c. 52, s. 24; Code, s. 2846; Rev., s. 4403; C.S., s. 6092.)

ARTICLE 17.

Confidentiality of Legislative Communications.

§120-129. Definitions.

As used in this Article:

(1) "Document" means all records, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material regardless of physical form or characteristics.

(1a) "Legislative commission" means any commission or committee which the Legislative Services Commission is directed or authorized to staff by law or resolution and which it does, in fact, staff.

(2) "Legislative employee" means employees and officers of the General Assembly, consultants and counsel to members and committees of either house of the General Assembly or of legislative commissions who are paid by State funds, and employees of the Institute of Government; but does not mean legislators and members of the Council of State.

(3) "Legislator" means a member-elect, member-designate, or member of the North Carolina Senate or House of Representatives. (1983, c. 900, s. 1; 1983 (Reg. Sess., 1984), c. 1038, ss. 1-3.)

§120-130. Drafting and information requests to legislative employees.

(a) A drafting request made to a legislative employee from a legislator is confidential. Neither the identity of the legislator making the request nor,

except to the extent necessary to answer the request, the existence of the request may be revealed to any person who is not a legislative employee without the consent of the legislator.

(b) An information request made to a legislative employee from a legislator is confidential. Neither the identity of the legislator making the request nor, except to the extent necessary to answer the request, the existence of the request may be revealed to any person who is not a legislative employee without the consent of the legislator. Notwithstanding the preceding sentences of this subsection, the periodic publication by the Fiscal Research Division of the Legislative Services Office of a list of information requests is not prohibited, if the identity of the legislator making the request is not revealed.

(c) Any supporting documents submitted or caused to be submitted to a legislative employee by a legislator in connection with a drafting or information request are confidential. Except to the extent necessary to answer the request, neither the document nor copies of it, nor the identity of the person, firm, or association producing it, may be provided to any person who is not a legislative employee without the consent of the legislator.

(d) Drafting or information requests or supporting documents are not "public records" as defined by G.S. 132-1. (1983, c. 900, s. 1.)

§120-131. Documents produced by legislative employees.

(a) Documents prepared by legislative employees upon the request of legislators are confidential. Except as provided in subsection (b) of this section, the existence of the document may not be revealed nor may a copy of the document be provided to any person who is not a legislative employee without the consent of the legislator.

(b) A document prepared by a legislative employee upon the request of a legislator becomes available to the public when the document is a:

- (1) Bill or resolution and it has been introduced;
- (2) Proposed amendment or committee substitute for a bill or resolution and it has been offered at a committee meeting or on the floor of a house;
- (3) Proposed conference committee report and it has been offered at a joint meeting of the conference committees; or
- (4) Bill, resolution, memorandum, written analysis, letter, or other document resulting from a drafting or information request and it has been distributed at a legislative commission or standing committee or subcommittee meeting not held in executive session or on the floor of a house.

A document prepared by a legislative employee upon the request of any legislator, that pursuant to this Article does not become available to the public, is not a "public record," as defined by G.S. 132-1.

(c) This section does not prohibit the dissemination of information or language contained in any document which has been prepared by a legislative employee in response to a substantially similar request from another legislator, provided that the identity of the requesting legislator and the fact that he had made such a request not be divulged. (1983, c. 900, s. 1; 1983 (Reg. Sess., 1984), c. 1038, s. 4.)

§120-132. Testimony by legislative employees.

No present or former legislative employees may be required to disclose any information that the individual, while employed or retained by the State, may have acquired:

(1) In a standing, select, or conference committee or subcommittee of either house of the General Assembly or a legislative commission;

(2) On the floor of either house of the General Assembly, or in any office of a legislator;

(3) As a result of communications that are confidential under G.S. 120-130 and G.S. 120-131.

Notwithstanding the provisions of the preceding sentence, the presiding judge of a court of competent jurisdiction may compel that disclosure, if in his opinion, the same is necessary to a proper administration of justice. (1983, c. 900, s. 1; 1983 (Reg. Sess., 1984), c. 1038, s. 5.)

§120-133. Redistricting communications.

Notwithstanding any other provision of law, all drafting and information requests to legislative employees and documents prepared by legislative employees for legislators concerning redistricting the North Carolina General Assembly or the Congressional Districts are no longer confidential and become public records upon the ratification of the act establishing the relevant district plan. Present and former legislative employees may be required to disclose information otherwise protected by G.S. 120-132 concerning redistricting the North Carolina General Assembly or the Congressional Districts upon the ratification of the act establishing the relevant district plan. (1983, c. 900, s. 1.)

§120-134. Penalty.

Violation of any provision of this Article shall be grounds for disciplinary action in the case of employees and for removal from office in the case of public officers. No criminal penalty shall attach for any violation of this Article. (1983, c. 900, s. 1; 1983 (Reg. Sess., 1984), c. 1038, s. 6.)

CHAPTER 143.

STATE DEPARTMENTS, INSTITUTIONS, AND COMMISSIONS.

ARTICLE 60.

State and Certain Local Educational Entity

Employees, Nonsalaried Public Officials,

and Legislators Required to Repay

Money Owed to State.

PART 1. State and Local Educational Entity Employees.

§143-552. Definitions.

As used in this Part:

(1) "Employing entity" means and includes:

- a. Any State entity enumerated in G.S. 143B-3 of the Executive Organization Act of 1973;
- b. Any city or county board of education under Chapter 115 of the General Statutes; or
- c. Any board of trustees of a community college under Chapter 115D of the General Statutes.

(2) "Employee" means any person who is appointed to or hired and employed by an employing entity under this Part and whose salary is paid in whole or in part by State funds.

(3) "Net disposable earnings" means the salary paid to an employee by an employing entity after deduction of withholdings for taxes, social security, State retirement or any other sum obligated by law to be withheld. (1979, c. 864, s. 1.; 1987, c. 564, s. 29.)

§143-553. Conditional continuing employment; notification among employing entities; repayment election.

(a) All persons employed by an employing entity as defined by this Part who owe money to the State and whose salaries are paid in whole or in part by State funds must make full restitution of the amount owed as a condition of continuing employment.

(b) Whenever a representative of any employing entity as defined by this Part has knowledge that an employee owes money to the State and is delinquent in satisfying this obligation, the representative shall notify the employing entity. Upon receipt of notification an employing entity shall terminate the employee's employment if after written notice of his right to do so he does not repay the money within a reasonable period of time; provided, however, that where there is a genuine dispute as to whether the money is owed or how much is owed, or there is an unresolved issue concerning insurance coverage, the employee shall not be dismissed as long as he is pursuing administrative or judicial remedies to have the dispute or the issue resolved.

(c) An employee of any employing entity who has elected in writing to allow not less than ten percent (10%) of his net disposable earnings to be periodically withheld for application towards a debt to the State shall be deemed to be repaying the money within a reasonable period of time and shall

not have his employment terminated so long as he is consenting to repayment according to such terms. Furthermore, the employing entity shall allow the employee who for some extraordinary reason is incapable of repaying the obligation to the State according to the preceding terms to continue employment as long as he is attempting repayment in good faith under his present financial circumstances, but shall promptly terminate the employee's employment if he ceases to make payments or discontinues a good faith effort to make repayment. (1979, c. 864, s. 1.)

§143-554. Right of employee appeal.

(a) Any employee or former employee of an employing entity within the meaning of G.S. 143-552(1)a whose employment is terminated pursuant to the provisions of this Part shall be given the opportunity to appeal the employment termination to the State Personnel Commission according to the normal appeal and hearing procedures provided by Chapter 126 and the State Personnel Commission rules adopted pursuant to the authority of that Chapter; however, nothing herein shall be construed to give the right to termination reviews to anyone exempt from that right under G.S. 126-5.

(b) Before the employment of an employee of a local board of education within the meaning of G.S. 143-552(1)b who is either a superintendent, supervisor, principal, teacher or other professional person is terminated pursuant to this Part, the local board of education shall comply with the provisions of G.S. 115-142. If an employee within the meaning of G.S. 143-552(1)b is other than one whose termination is made reviewable pursuant to G.S. 115-142, he shall be given the opportunity for a hearing before the local board of education prior to the termination of his employment.

(c) Before the employment of an employee of a board of trustees of a community college within the meaning of G.S. 143-552(1)c is finally terminated pursuant to this Part, he shall be given the opportunity for a hearing before the board of trustees. (1979, c. 864, s. 1.; 1987, c. 564, s. 12.)

PART 2. Public Officials.

§143-555. Definitions.

As used in this Part:

(1) "Appointing authority" means the Governor, Chief Justice of the Supreme Court, Lieutenant Governor, Speaker of the House, President pro tempore of the Senate, members of the Council of State, all heads of the executive departments of State government, the Board of Governors of The University of North Carolina, and any other State person or group of State persons authorized by law to appoint to a public office.

(2) "Employing entity" means and includes:

- a. Any State entity enumerated in G.S. 143B-3 of the Executive Organization Act of 1973;
- b. Any city or county board of education under Chapter 115 of the General Statutes; or
- c. Any board of trustees of a community college under Chapter 115D of the General Statutes.

(3) "Public office" means appointive membership on any State Commission, council, committee, board, including occupational licensing boards as defined in G.S. 93B-1, board of trustees, including boards of constituent institutions of The University of North Carolina and boards of community colleges under Chapter 115D of the General Statutes, and any other State agency created by law; provided that "public office" does not

include an office for which a regular salary is paid to the holder as an employee of the State or of one of its departments, agencies, or institutions.

(4) "Public official" means any person who is a member of any public office as defined by this Part. (1979, c. 864, s. 1.; 1987, c. 564, s. 30.)

§143-556. Notification of the appointing authority; investigation.

Whenever a representative of an employing entity as defined by this Part has knowledge that a public official owes money to the State and is delinquent in satisfying this obligation, the representative shall notify the appointing authority who appointed the public official in question. Upon receipt of notification the appointing authority shall investigate the circumstances of the claim of money owed to the State for purposes of determining if a debt is owed and its amount. (1979, c. 864, s. 1.)

§143-557. Conditional continuing appointment; repayment election.

If after investigation under the terms of this Part an appointing authority determines the existence of a delinquent monetary obligation owed to the State by a public official, he shall notify the public official that his appointment will be terminated 60 days from the date of notification unless repayment in full is made within that period. Upon determination that any public official has not made repayment in full after the expiration of the time prescribed by this section, the appointing authority shall terminate the appointment of the public official; provided however, the appointing authority shall allow the public official who for some extraordinary reason is incapable of repaying the obligation according to the preceding terms to continue his appointment as long as he is attempting repayment in good faith under his present financial circumstances, but shall promptly terminate the public official's appointment if he ceases to make payments or discontinues a good faith effort to make repayment. (1979, c. 864, s. 1.)

PART 3. Legislators.

§143-558. Definition of employing entity.

For the purposes of this Part "employing entity" shall have the same meaning as provided in G.S. 143-552(1) and 143-555(2). (1979, c. 864, s. 1.)

§143-559. Notification to the Legislative Ethics Committee; investigation.

Whenever a representative of any employing entity as defined by this Part has knowledge that a legislator owes money to the State and is delinquent in satisfying this obligation, this information shall be reported to the Legislative Ethics Committee established pursuant to Chapter 120, Article 14 of the General Statutes for disposition. (1979, c. 864, s. 1.)

PART 4. Confidentiality Exemption, Preservation of Federal Funds, and Limitation of Actions.

§143-560. Confidentiality exemption.

Notwithstanding the provisions of any law of this State making confidential the contents of any records or prohibiting the release or disclosure of any information, all information exchange among the employing entities defined under this Article necessary to accomplish and effectuate the intent of this Article is lawful. (1979, c. 864, s. 1.)

§143-561. Preservation of federal funds.

Nothing in this Article is intended to conflict with any provision of federal law or to result in the loss of federal funds. If the exchange among employing entities of information necessary to effectuate the provisions of this Article would conflict with this intention, the exchange of information shall not be made. (1979, c. 864, s. 1.)

§143-562. Applicability of a statute of limitations.

Payments on obligations to the State collected under the procedures established by this Article shall not be construed to revive obligations or any part thereof already barred by an applicable statute of limitations. Furthermore, payments made as a result of collection procedures established by the terms of this Article shall not be construed to extend an applicable statute of limitations. (1979, c. 864, s. 1.)

EXECUTIVE BRANCH

EXECUTIVE ORDER NUMBER 1

January 31, 1985

WHEREAS, public office in North Carolina must always be regarded as a public trust; and

WHEREAS, the people of North Carolina have a fundamental right to the assurance that officers of their government will not use their public position for personal gain; and

WHEREAS, this Administration is committed to restore and maintain the confidence of North Carolina citizens in their government; and

WHEREAS, there is a need in North Carolina for the creation of an institutionalized procedure designed to prevent the occurrence of conflicts of interest in government and to deal with them when they do occur; and

WHEREAS, this Administration realizes that the vast majority of state government employees are honest and hard working in their public and private lives;

NOW, THEREFORE, it is hereby ordered:

Section 1. Executive Order Number 1, January 10, 1977.

Executive Order Number 1, dated January 10, 1977, is hereby rescinded. All records, including but not limited to Statements of Economic Interest, of the North Carolina Board of Ethics created pursuant to said executive order, are transferred to the North Carolina Board of Ethics herein.

Section 2. North Carolina Board of Ethics. There is hereby established the North Carolina Board of Ethics consisting of five persons to be appointed by the Governor to serve at his pleasure. The Governor shall, from time to time, designate one of the members as Chairman. The members shall receive no compensation, but shall receive reimbursement for any necessary expenses incurred in connection with the performance of their duties pursuant to General Statute 138-15. The Board of Ethics shall not be considered a public office for the purpose of dual office holding.

Section 3. Persons subject to Order. The following persons are subject to this order and to the jurisdiction of the Board of Ethics:

- (a) All employees in the Office of the Governor.
- (b) The heads of all principal departments of state government who are appointed by the Governor.
- (c) The chief deputy or chief administrative assistant to each of the aforesaid heads of principal state departments.
- (d) All "confidential" assistants or secretaries to the aforesaid department heads (or to the aforesaid chief deputies and assistants of department heads) as defined in G.S. 126-5(b)(2).
- (e) All employees in policy-making positions as designated by the Governor pursuant to the State Personnel Act as defined in G.S. 126-5(b)(3), and all "confidential" secretaries to these individuals as defined in G.S. 126-5(b)(4).
- (f) Any other employees in the principal departments of state government, except in those principal departments headed by elected heads other than the Governor, as may be designated by rule of the Board subject to the approval of the Governor, to the extent such designation does not conflict with the State Personnel Act.
- (g) The members of all commissions, boards and councils appointed by the Governor, with the exception of members of those commissions, boards and councils the Board of Ethics determines perform solely advisory functions.

- (h) The elected heads of other principal state departments, and certain employees of those departments as designated by the head, in the event of an election by such department head to participate in the system created by this Order as provided for in Section 8 of this Order.

- (i) Members of North Carolina Board of Ethics.

Section 4. Exemption From Order. Notwithstanding Section 3, herein, a commission, board or council to which the Governor appoints members, may upon written application request the Board of Ethics to exempt its members from this Order. The Board of Ethics shall make a determination upon such requests, which shall be final, after a specific finding by the Board that such exemption does not violate the intent of this Order and in no way interferes or conflicts with the proper and effective discharge of the official duties of the members of the commission, board or council making the request. The determination of the Board of Ethics in every such case shall be made available for public inspection at a convenient location.

Section 5. Specific Prohibitions.

- (a) No person subject to this Order shall engage in any activity which interferes or is in conflict with the proper and effective discharge of such person's official duties;
- (b) No person who is employed by the state in a full-time position and who is subject to this Order, shall hold any other public office or public employment for which compensation, direct or indirect, is received except under circumstances and in the manner approved by the Board upon review of a written request pursuant to Board procedures;
- (c) No person subject to this Order shall solicit in their official capacity and gratuity or other benefits for themselves from any other person under any circumstances.

Any exception to the foregoing prohibitions granted by the Board, may only be allowed by the Board upon written application to the Board, and after a specific finding by the Board that such activity does not violate the intent of this Order and in no way interferes or conflicts with the proper and effective discharge of the official duties of the person making the request. The Board shall make a determination in each such case, which shall be final. The determination of the Board in every such case shall be made available for public inspection at a convenient location.

Section 6. Statements of Economic Interest.

- (a) Within thirty days from commencement of state service or the effective date of this Order, whichever is later, and thereafter between April 15 and May 15 of each succeeding year, each of the following persons subject to this Order shall file with the Board a sworn Statement of Economic Interest:
 - (i) Each person appointed by the Governor and subject to this Order;
 - (ii) Each person subject to this Order, whether or not appointed by the Governor, who receives \$30,000 or more from the state;
 - (iii) Each person subject to this Order, irrespective of the amount of compensation received, whose position is subject to undue influence (as determined from time to time by the Board);
 - (iv) Each person designated by the elected head of a principal department of state government pursuant to Section 8 of this order;

(v) Statements filed by members of the Board of Ethics shall be filed with the Governor and shall be made public.

(b) The Statement of Economic Interest shall contain:

- (i) The name, home address, occupation, employer and business address of the person filing.
- (ii) A list of all assets and liabilities of the person filing which exceed a valuation of \$5,000. With respect to each asset and liability listed, the specific valuation need not be set forth, but there should be an indication as to whether the valuation of each asset or liability exceeds \$10,000. This list shall contain, but shall not be limited to, the following:
 - (A) All real estate, with specific description adequate to determine the location of each parcel.
 - (B) The name of each publicly-owned company (companies which are required to register with the Securities and Exchange Commission) in which securities are owned, with an indication as to whether the valuation of the securities owned in each company listed exceeds \$10,000.
 - (C) The name of each non-publicly-owned company or business entity in which securities or other equity interests are owned, and an indication as to whether the valuation of the securities or equity interest owned in each such company or business entity listed exceeds \$10,000.
 - (D) With respect to the aforesaid non-publicly-owned company or business entities in which the interest of the person filing exceeds a valuation of \$10,000, if any such companies or business entities own securities or equity interests in other companies or business entities, the name of each such other company or business entity should be listed if the securities or other equity interests in them held by the aforesaid non-publicly-owned company exceed a valuation of \$10,000.
 - (E) If the person filing or his or her spouse or dependent children are the beneficiary of a trust created, established or controlled by the person filing, which holds assets, and if those assets are known, the name of each company or other business entity in which securities or other equity interests are held by the trust should be listed, with an indication as to whether the valuation of the securities or equity interest held in each such company or business entity listed exceed \$10,000, and with the name and address of the trustee and a description of the trust. If any of the aforesaid assets are securities or other equity interests in a corporation or other business entity, each such corporation or business entity should be listed separately by name. If the assets held by such a trust and the name and address of the trustee should be provided.
 - (F) A list of all other assets and liabilities which exceed a valuation of \$5,000 (including bank accounts and debts), with an indication as to whether each asset and liability exceeds a valuation of \$10,000.

(iii) A list of all sources (not specific amounts) of income (including capital gains) shown on the most recent federal and state income tax returns of the person filing where \$5,000 or more was received from such source.

(iv) If the person filing is a practicing attorney, check each category of legal representation in which the person filing, and/or his or her law firm has, during any single year of the past five years, earned legal fees in excess of five thousand dollars (\$5,000) from any of the following categories of legal representation:

_____	Criminal law
_____	Utilities regulation or representation of regulated utilities
_____	Corporation law
_____	Taxation
_____	Decedent's estates
_____	Labor law
_____	Insurance law
_____	Administrative law
_____	Real property
_____	Admiralty
_____	Negligence (representing plaintiffs)
_____	Negligence (representing defendants)

(v) A list of all business with which, during the past five years, the person filing has been associated, indicating the time period of such association and the relationship with each business as an officer, employee, director, partner or a material owner of a security or other equity interest and indicating whether or not each does business with or is regulated by the state and the nature of the business, if any, done with state.

(vi) In all statements of economic interest after the first one filed by an individual, a list of all gifts of a value of more than \$100 received during the twelve months preceding the date of the Statement of Economic Interest from sources other than relatives of the person filing and his or her spouse, and a list of all gifts, of value of more than \$50 received from any source having business with or regulated by the state.

(vii) Other information as may be deemed necessary to effectuate the purpose of this Order, as provided for by rule of the Board.

(viii) A statement setting forth any other information or relationship which the person filing believes may relate to any actual or potential conflict of interest he or she may have as an employee of state government.

(ix) A sworn certification by the person filing that he or she has read the Statement of Economic Interest, and that to the best of his or her knowledge and belief it is true, correct, complete and that he or she has not transferred and will not transfer any asset, interest or other property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

- (c) The person filing a Statement of Economic Interest shall list as specified in Section 6(b) the assets, liabilities, and sources of income of his or her spouse which are derived from the assets or income of the person filing, controlled by the person filing, or for which the person filing is jointly or severally liable.
- (d) Any person required to file a Statement of Economic Interest or his or her spouse may request the Board to delete an item, which may be deleted by the Board pursuant to a written request, but only upon a finding that it is of a confidential nature, does not in any way relate to the duties of the position held or to be held by such person and does not create an actual or potential conflict of interest.
- (e) The Board of Ethics shall issue a form for such Statements of Economic Interest, which in no event shall be later than February 15, 1985.
- (f) After review and evaluation by the Board, the Statements of Economic Interest will be made available by the Board for public inspection.

Section 7. Duties of Board of Ethics.

- (a) The Board shall review all Statements of Economic Interest submitted to it to determine their conformity with the terms of this Order and the Board's rules, and to evaluate the financial interests of the person filing to determine whether there appears to be actual or potential conflicts of interest. The Board shall submit a written report of each such evaluation to the Official responsible for making the appointment of the person filing, and to the Governor, unless the person is an employee of one of the other principal departments of state government listed in Section 8 of this Order, in which case a copy of the written report shall be sent to the elected head of that department. The Board may recommend remedial action with respect to any problem which is apparent from any Statement.
- (b) The Board shall evaluate all claims of privacy made concerning a portion of a Statement of Economic Interest, prior to making the Statement available for public inspection, and the decision of the Board in these matters shall be final.
- (c) The Board shall provide by rule for the time, place and manner of convenient public inspection of the Statements of Economic Interest.
- (d) The Board shall promulgate readily understandable rules, forms and procedures to carry out the purposes of this Order and shall publish them.
- (e) The Board shall render opinions and determinations on matters pertaining to the interpretation and application of this Order.
- (f) The Board shall provide reasonable assistance to all persons subject to this Order in complying with the terms of this Order.
- (g) The Board shall receive information from the public concerning potential conflicts of interest and make necessary investigations. The Board shall promulgate rules to protect all employees from specious and unfounded claims and damage to their reputations which could result from such claims. The Board also shall promulgate rules to protect employees from any direct or indirect reprisals from any source resulting from efforts to inform the Board of the existence of potential or actual conflicts of interest in state government. The Board also shall promulgate rules providing for full and fair consideration of the merits of all complaints received which rules shall assure that the rights of all parties involved in the

investigation are protected. All complaints and allegations concerning actual or potential conflicts of interest to be considered by the Board must contain the name, address, telephone number and oath of the individual filing such complaint or making such allegation. The Board shall prepare a report of each such investigation and forward a copy to the official responsible for making the appointment of the person investigated, and to the Governor, unless the person investigated is an employee of one of the other principal departments of state government listed in Section 8 of this Order, in which case a copy of the written report shall be sent to the elected head of that department. The Board may recommend remedial action with respect to any problem revealed by such an investigation.

- (h) The Board shall request, when necessary to accomplish the purposes of this Order, additional information from persons covered by this Order.
- (i) The Board shall meet regularly, at the call of the Chairman, to carry out its duties.
- (j) The Board shall submit a report annually to the Governor on their activities and generally on the subject of public disclosure, ethics and conflicts of interest, including recommendations for administrative and legislative action.
- (k) The Board shall perform such other duties as may be necessary to accomplish the purposes of this Order.

Section 8. Other Principal Departments of State Government. The elected heads of other principal departments of the State government (Office of the Lieutenant Governor, Departments of the Secretary of State, State Auditor, State Treasurer, Public Education, Justice, Agriculture, Labor and Insurance) and the University of North Carolina Board of Governors may, and hereby are invited to, join in the effort represented by this Order by providing the Chairman of the Board of Ethics with a written notice of their election to have the terms of this Order apply to those employees under their jurisdiction (who are not covered by the State Personnel Act), and with a list of the employees under their jurisdiction who will be asked to submit a Statement of Economic Interest. All services of the Board available to the Governor under this Order shall be available to each of the heads of the aforesaid departments so electing, and all of the services of the Board available to employees under this order shall be available to employees brought within the coverage of this Order in this manner.

Section 9. Sanctions. The failure to any employee to make timely filing of a required document, the making of a false or misleading statement or an omission in a document, the failure to cooperate with the Board of Ethics and the failure to comply with the terms of this Order, shall be grounds for disciplinary action, including discharge.

Section 10. Board Offices. The Board of Ethics and its staff, for administrative purposes only, shall be located in the Department of Administration.

Done in Raleigh, North Carolina, this the 31st day of January in the year of our Lord, one thousand nine hundred eighty-five.

James G. Martin, Governor
State of North Carolina

CROSS - REFERENCES

Executive Order Number 1, Section 2, dated January 10, 1977, by Governor James B. Hunt, and Executive Order Number 1, Section 3, January 31, 1985, by Governor James G. Martin, refer to North Carolina General Statute Section 126-5. Session Laws 1977, Chapter 866 amended Section 126-5 by adding a new subsection (b) and rearranging the other subsections. The following is a cross - reference of the references made to Section 126-5 by the above Executive Orders to Section 126-5 as amended.

<u>Executive Orders</u>	<u>Section 126-5 As Amended</u>
126-5(b)(2)	126-5(d)(3)
126-5(b)(3)	126-5(d)(4)



NORTH CAROLINA BOARD OF ETHICS

116 WEST JONES STREET
RALEIGH 27611
(919) 733-5103

STATEMENT OF ECONOMIC INTEREST

Mail form to the Board of Ethics, 116 West Jones Street, Raleigh, NC 27611. For assistance, call Millie Donavant at 919-733-5103.

The person filing shall include in the following the assets, liabilities, and sources of income of his or her spouse which are derived from the assets or income of the person filing, controlled by the person filing, or for which the person filing is jointly or severally liable.

Name of Person Filing _____

Home Address _____

Home Telephone Number _____

Position in State Government Requiring Statement of Economic Interest:

(a) State Employee

Position Title, Division

Department

Office Address

Office Telephone Number

(b) Appointee

Name of Board, Commission, or Council

Position and Employer

Office Address

Office Telephone Number

1. List all parcels of real estate having a fair market value of more than \$5,000 owned by you or in which you have any interest, whether as tenant in common, tenant by the entirety, or other. When ownership is not in you individually, please give the type of ownership and the person or persons who have an interest in the property. State the use of each parcel and indicate whether the fair market value is more than \$10,000.

Street Address or Precise Location

() Value less than \$10,000

() Value more than \$10,000

Current use, e.g. Residence, Rental, Business

Person or Persons having an interest in the Property

Street Address or Precise Location

() Value less than \$10,000
() Value more than \$10,000

Current use, e.g. Residence, Rental, Business

Person or Persons having an interest in the Property

2. List each publicly-owned company (i.e., company required to register with the Securities and Exchange Commission) in which you own stock or other securities having a fair market value of more than \$5,000. Indicate whether the fair market value is more than \$10,000.

() Value does not exceed \$10,000
() Value exceeds \$10,000

() Value does not exceed \$10,000
() Value exceeds \$10,000

() Value does not exceed \$10,000
() Value exceeds \$10,000

3. List each non-publicly-owned business in which you have an ownership interest having a fair market value of more than \$5,000. For each business listed, give the dates of association with the business, indicate the type of interest held (e.g. sole proprietorship, partnership, owner of stock), describe the nature of the business activity, and state whether the business is regulated by or has done business with the State of N.C. If the business does or has done business with state, describe the nature and circumstances of the relationship.

Name of Business _____

Value does not exceed \$10,000

Value exceeds \$10,000

Regulated

Not regulated

Business with state: _____

Type of Ownership Interest _____ Dates _____

Type of Business Activity _____

4. If any non-publicly-owned business listed in response to Question #3 itself has an ownership interest in another business, list the name of the business in which the interest is held and indicate whether the value of the interest exceeds \$10,000.

Name of Business Holding Interest _____

Value does not exceed \$10,000

Value exceeds \$10,000

Name of Business in which Interest is held _____

5. If you, your spouse, or your dependent children are the beneficiary of a trust created, established or controlled by the person filing, list the name and address of the trustee and describe the trust. If you know or can readily ascertain the assets held by the trust, list each business in which the trust has an ownership interest with a fair market value of more than \$5,000 and indicate whether the value is more than \$10,000.

Name of Trustee _____

Trustee's Address _____

Type of Trust _____

Ownership Interest held by Trust: _____

Value does not exceed \$10,000

Name of Business _____

Value exceeds \$10,000

6. Indicate assets with a fair market value of more than \$5,000 each held by you which have not been listed in response to Questions 1-5 above. It is not necessary to list household furniture, jewelry, and personal effects.

7. List all liabilities of more than \$5,000 and give the name of the creditor, describe the nature of the liability (e.g. home mortgage, personal loan, business debt), indicate whether it exceeds \$10,000.

Name of Creditor Value does not exceed \$10,000
 Value exceeds \$10,000

Type of Liability Value does not exceed \$10,000
 Value exceeds \$10,000

Name of Creditor Value does not exceed \$10,000
 Value exceeds \$10,000

Type of Liability Value does not exceed \$10,000
 Value exceeds \$10,000

8. List all sources of income (including capital gains) received by you where \$5,000 or more was received from such sources as reported on your most recent state and federal income tax returns. For each source listed, give the name of the individual or organization from which the income was received, and describe the type of income e.g. salary, wages, professional fees or commissions, honoraria, interest, stock dividends, capital gains, business profits.

<u>Source</u>	<u>Type of Income</u>

9. If you are a practicing attorney, check each category of legal representation in which you and/or the law firm with which you are associated, has during any single year of the past five years, earned legal fees in excess of \$5,000 from any of the following categories of legal representation:

<input type="checkbox"/> Admiralty	<input type="checkbox"/> Taxation
<input type="checkbox"/> Negligence (representing plaintiffs)	<input type="checkbox"/> Decedent's estates
<input type="checkbox"/> Negligence (representing defendants)	<input type="checkbox"/> Labor law
<input type="checkbox"/> Criminal law	<input type="checkbox"/> Insurance law
<input type="checkbox"/> Utilities regulation or representation of regulated utilities	<input type="checkbox"/> Administrative law
<input type="checkbox"/> Corporation law	<input type="checkbox"/> Real property
	<input type="checkbox"/> Representation of counties or

10. List all businesses or organizations (regardless of whether non profit) with which you have been associated as an employee, officer, director, partner, or a material owner of a security or other equity interest at any time during the last five years. For each business or organization listed, give the dates of association, describe the relationship, indicate the nature of the business activity, and state whether the business is regulated by or does business with the State of NC. If the business does or has done business with the state, describe the nature and circumstances of the relationship.

Name of Business

() Regulated by State
() Not Regulated by State
() No Business with State
() Business with State:

Type of Association Dates

—

Type of Business Activity

() Regulated by State
() Not Regulated by State
() No Business with State
() Business with State:

— 1 —

Type of Business Activity

11. State whether your spouse is involved in any way with any business or organization, which involvement might create a conflict of interest for you. If so, please explain.

—
—
—

12. During the past three years, have you transferred any property, real or personal, or any interest therein, where the transfer was not supported by consideration and where the value of the property exceeded \$10,000? If so, please describe the property and give the name of the transferee.

13. Please list all gifts of a value of more than \$100 received during the twelve months preceding the date of this statement from sources other than relatives and your spouse, and a list of all gifts of more than \$50 in value received from any source having business with or regulated by the State.

14. Do you hold any other governmental position from which you receive income?

15. Are you or any of the businesses with which you are associated currently the subject of an active or pending criminal investigation by any law enforcement or regulatory agency, including the Internal Revenue Service?

NO _____ If "yes", please explain _____

16. Having read Executive Order Number One, are there any matters which may involve a conflict of interest or any other problems which are not fully covered by your answers to this questionnaire? _____ NO. If "yes", please set forth the pertinent facts below, including an explanation of how you would propose to resolve such conflicts of interest or problem.

VERIFICATION

I hereby do certify that I have read this Statement of Economic Interest, and all attachments, and to the best of my knowledge and belief it is true, correct and complete.

I hereby do certify that I have not transferred, and will not transfer, any asset, interest or property for the purpose of concealing it from disclosure while retaining an equitable interest therein.

Date

Signature

NORTH CAROLINA

COUNTY OF _____

Subscribed and sworn to before me this _____ day of _____,
19 ____.

My Commission Expires:

Notary Public



NORTH CAROLINA BOARD OF ETHICS

116 WEST JONES STREET
RALEIGH 27611
(919) 733-5103

April 5, 1985

Judge Naomi E. Morris
Chairman

INTERPRETIVE MEMORANDUM #1

MEANING OF ACTUAL AND POTENTIAL CONFLICTS OF INTEREST

Section 7(a) of Executive Order Number One signed January 31, 1985 by Governor James G. Martin requires The Board of Ethics to evaluate statements of economic interest to determine whether actual or potential conflicts of interest exist. In making these evaluations, the board uses the following definitions of actual and potential conflicts of interest.

Actual Conflict of Interest -- A very narrow situation in which the subject has a financial interest whose very existence poses a conflict with the public interest that he or she has an official duty to protect. Some examples are:

1. A bank president, or substantial stockholder in a bank, serving on the credit union commission.
2. A utility manager, or substantial stockholder of a utility, serving on the utilities commission.
3. An official with authority to place state funds serving on bank boards, or has substantial stock in banks, doing business with the same agency of state government.

Potential Conflict of Interest -- A situation in which the subject can make specific decisions to benefit personal interests at the public expense, is in a position to use confidential information for private use, or can use influence to benefit personal interests at the public expense. Some examples are:

1. Serving in a position that allows the subject to vote on awarding state funds to private affiliations.
2. Serving on a licensing board that grants a license to members of his or her profession or occupation.
3. Serving in a position that allows the subject to vote on rules and regulations governing businesses with which he or she is affiliated.

Recommendation for Remedial Action -- Section 7(a) of Executive Order Number One authorizes the board to recommend remedial action with respect to any problem which is apparent from any statement of economic interest.

In general, the board will only recommend remedial action in the sense of divestiture of interests, use of blind trusts, etc., when actual conflicts of interest exist.

For potential conflicts of interest, the subject should use caution to avoid appearances of conflict of interest as well as actual conflict of interest. The subject should place the potential conflict of interest on the public record of the body with which he or she is associated. The subject should disqualify himself or herself from voting on or discussing situations that could affect private interests.



Chairman, Board of Ethics

April 5, 1985

RULES GOVERNING OPERATION OF THE NC BOARD OF ETHICS

.0100 -- BOARD ORGANIZATION AND FUNCTIONING

1. NC Board of Ethics
2. Staff
3. Offices
4. Meetings
5. Board Action
6. Quorum
7. Disqualification
8. Proxy
9. Minutes

.0200 -- POWERS AND DUTIES OF BOARD

See Section 7 of Executive Order Number One by James G. Martin.

.0300 -- PERSONS SUBJECT TO JURISDICTION OF THE BOARD

See Section 3 of Executive Order Number One by James G. Martin. The Order applies to persons already engaged in state service on January 31, 1985.

.0400 -- STATEMENTS OF ECONOMIC INTEREST

1. Persons Required to File a Statement of Economic Interest
2. Contents
3. Filing
4. Preliminary Staff Review
5. Evaluation
6. Public Disclosure and Inspection
7. Requests for Deletion
8. Requests for Evaluation of Supplemental Statements

.0101 North Carolina Board of Ethics

(a) The Board of Ethics consists of five members appointed by the Governor and serving at his pleasure. The chairperson is designated by the Governor.

(b) Membership on the board is not considered a public office for purposes of any prohibition against dual office holding.

(c) Members of the board receive no compensation but are reimbursed for expenses as provided in G.S. 138-5.

(d) For administrative purposes only, the board and staff are considered a part of the Department of Administration.

.0102 Staff

The staff of the board is headed by an administrative assistant who is appointed by the board.

.0103 Offices

Offices of the board and staff are located at 116 West Jones Street, Raleigh, NC. Office hours are those of the other agencies and offices of state government. The telephone number is 919-733-5103.

.0104 Meetings

(a) The board meets regularly at the call of the chairperson at places designated by the chairperson.

(b) Board meetings shall be conducted in accordance with Roberts Rules of Order.

(c) It shall be the policy of the board to comply with the provisions of G.S. 143-318.1, et. seq., governing meetings of governmental bodies. The board shall meet in closed session when evaluating statements of economic interest, when considering requests for deletions from such statements, and when considering complaints.

.0105 Board Action

The board acts by a majority of members present at a meeting at which there is a quorum. Board action may also be taken by a majority of members by telephone, letter, or other means of communication with the unanimous consent of all members.

.0106 Quorum

A quorum consists of three members of the board.

.0107 Disqualification

It shall be the policy of the board that a member shall not participate in consideration of any matter involving a person subject to the board's jurisdiction if:

(a) The member is a business associate or former business associate of the person.

(b) The member has had or expects to have significant dealings with the person while the person is in state service.

(c) The member or chairperson considers it improper for any other reason for the member to consider the matter.

The board and its members shall make every effort to avoid the appearance of impropriety.

.0108 Proxy

A board member may vote by written proxy given to another board member. The proxy shall specify the member's vote on a particular question.

.0109 Minutes

(a) The administrative assistant shall keep minutes of each board meeting and shall record the votes of board members as to any determination made by the board which is not unanimous.

(b) Minutes of meetings of the board open to the public shall be available for public inspection at the board's offices during regular office hours. Minutes of meetings not open to the public shall be available only to members of the board.

.0200 Powers and Duties of Board

See Section 7 of Executive Order Number One.

.0300 Persons Subject to Jurisdiction of the Board

See Section 3 of Executive Order Number One.

.0401 Persons Required to File a Statement of Economic Interest

(a) Each of the following persons subject to the jurisdiction of the board as set forth in Sections 3 and 8 of Executive Order Number One by James G. Martin shall file a statement of economic interest with the board:

- (1) Each person appointed by the Governor.
- (2) Each person, whether or not appointed by the Governor, who receives compensation in the amount of \$30,000 or more per year from the State of North Carolina.
- (3) Each person, regardless of the amount of compensation received, whose position is subject to undue influence as may be determined by the board.
- (4) Each person designated by the elected head of a principal department of state government as a person who will be asked to submit a statement of economic interest.

(b) A statement of economic interest shall be filed by each person listed in Rule .0401(a) of this section who was engaged in state service on January 31, 1985, as well as by each such person entering state service after January 31, 1985.

(c) The Board of Ethics will not accept statements of economic interest from persons not required to file them pursuant to Executive Order Number One.

(d) Persons who work part-time in positions subject to Executive Order Number One are required to file a statement of economic interest if their part-time pay rate is based on an annual salary rate of \$30,000 or more.

(e) Persons subject to the Order whose compensation from the state increases to an amount in excess of \$30,000 on or after July 1 each year shall be required to file a statement of economic interest during the next regular filing period.

(f) Persons who file a statement of economic interest between January 1 and April 14 of a calendar year are not required to file again during that year's annual filing period unless specifically requested to do so by the Board of Ethics.

.0402 Contents of Statement of Economic Interest

Statements shall include the information required by Section 6(b) of Executive Order Number One by James G. Martin.

.0403 Filing of Statement of Economic Interest

(a) Each person required to file a statement of economic interest with the board shall file within 30 days from commencement of state service, and thereafter between April 15 and May 15 of each succeeding year.

(b) Statements shall be filed with the administrative assistant at the board's offices.

(c) Statements shall not be disclosed except as provided in these regulations.

.0404 Preliminary Staff Review

(a) The administrative assistant shall review each statement for the purpose of determining whether it is complete and in proper form for consideration by the board. If the administrative assistant determines that a statement is incomplete or that additional information is necessary to clarify the statement, he or she shall request the person filing to provide appropriate additional information.

(b) The person filing the statement may appeal a request by the administrative assistant for additional information by submitting to the administrative assistant a written statement explaining why such additional information should not be provided. Such appeal shall be submitted within ten working days of receipt of the request for additional information.

(c) The board shall consider such appeals and its decision as to whether the additional information is required shall be final. The chairperson shall notify the person filing of the board's decision.

(d) If the board's decision upholds the administrative assistant's request for additional information, the person filing shall submit the information within 10 working days of receipt of notice of the board's decision. If the information is not submitted, the chairperson shall notify the proper officials.

.0405 Evaluation of Statement of Economic Interest

(a) The statement of economic interest shall be evaluated by members of the board not disqualified from considering it. The board shall consider the contents of the statement in light of the official functions and duties of the person filing.

(b) The chairperson may designate one or more members of the board or staff to evaluate statements on behalf of the board. Persons so designated shall bring any matters involving actual or potential conflicts of interest before the full board for consideration.

(c) Upon completion of the evaluation of a statement of economic interest, the board shall submit an evaluation letter to the proper officials. Prior to completion of the evaluation, the board may continue consideration for the purpose of obtaining additional information or request the person filing to appear before the board.

(d) Upon completion of the evaluation of a statement of economic interest, the person filing shall be provided with a copy of the board's evaluation letter at the same time as the letter is submitted to the proper officials.

.0406 Public Disclosure and Inspection

(a) Statements of economic interest shall be placed in the public file three weeks after the evaluation letter has been submitted to the proper officials and the person filing unless the person filing has made a request for deletion as provided for in these rules.

(b) For purposes of this rule, the evaluation letter shall be deemed to have been submitted to the proper officials and the person filing when it is deposited with the US Postal Service or the interoffice mail of state government.

(c) The public file shall be available for public inspection at the board's offices during its regular hours. The administrative assistant shall control and supervise any inspection of the file.

.0407 Requests for Deletion

(a) Any person filing a statement of economic interest may request the board to delete an item from the statement in the public file at any time. Such request shall be made in writing. The board may delete an item only if it finds that the item is of a confidential nature, does not in any way relate to the functions and duties of the position held or to be held by the person filing, and does not create an actual or potential conflict of interest.

(b) If the request for deletion is made before the statement is made public, the statement shall not be made public until the request is ruled on by the board. If the request is made after the statement has been made public, the item(s) with respect to which the request has been made shall be deleted from the statement in the public file for a period of two weeks or until the request is ruled on by the board, whichever is sooner.

(c) The request for deletion shall be submitted to the administrative assistant and shall contain:

- (1) The name, address, and telephone number of person filing.
- (2) The position held.
- (3) Date of the statement of economic interest affected.
- (4) A statement of the reasons for making the request.
- (5) A sworn statement that the request is made in good faith and not to delay disclosure of information to which the public ought to have access.

(d) Consideration of such requests shall have priority on the board's agenda.

(e) Upon consideration of a request for deletion, the board may rule on the request, continue consideration for the purpose of obtaining additional information, or request the person seeking the deletion to appear before the board.

(f) The board's ruling on the request shall be final.

(g) If the request for deletion is granted, a new statement of economic interest which does not include the item(s) deleted shall be submitted by the person filing for inclusion in the public file. If the request is denied, the item(s) shall remain in the statement in the public file.

(h) The person filing shall be notified in writing of the board's decision and the reasons for any denial of a request for deletion.

(i) If, following denial of a request for deletion of a specific item or item(s), the person filing submits a new request with respect to the same item(s), the provisions of Rule .0407(b) shall not apply and the item(s) previously ruled on shall not be deleted from the statement in the public file or reconsidered.

(j) Requests for deletion shall not be made public.

.0408 Requests for Evaluation of Supplemental Statements

(a) Any person required to file a statement of economic interest may submit a supplemental statement at any time and request an evaluation by the board. Such requests shall be submitted to the administrative assistant.

(b) The board shall consider and evaluate such statement in the manner set forth in Rule .0405 governing evaluation of required statement of economic interest.

(c) Rule .0406 governing disclosure and inspection of required statements of economic interest shall apply to statements submitted with a request for evaluation.

(d) A request for deletion of specific items in such statements shall be made and considered in the manner set forth in Rule .0407.

.0500 -- GENERAL RULINGS AND INDIVIDUAL ADVISORY OPINIONS

.0501 Definitions

(a) General Ruling: A formal ruling issued in writing by the board as to the meaning and application of the Order or of the rules, procedures, or forms adopted by the board. A general ruling will be issued only as to matters of general applicability.

(b) Individual Advisory Opinion: A formal opinion issued in writing by the board as to the meaning and application of the Order with respect to a set of real facts involving an individual subject to the Order. Opinions will not be issued with respect to changes in the economic interests of a person subject to the Order. Such changes will be evaluated upon submission of a supplemental statement of economic interest in accordance with Section .0408 of these rules.

.0502 Submission of Requests

(a) A general ruling may be requested by any person subject to the Order or may be issued by the board upon its own motion. An individual advisory opinion may be requested by the person subject to the Order who is involved in the specific situation presented.

(b) Requests shall be submitted in writing to the administrative assistant and shall include the following information:

- (1) The name, job title, mailing address, and telephone number of the person submitting the request.
- (2) A statement of whether a general ruling or individual advisory opinion is being requested.
- (3) Identification of the section of the Order or Rules or of the form or procedure to which the request relates.
- (4) A concise statement of the question or circumstances to be considered by the board.

(c) The administrative assistant may prepare and distribute standard forms for use in submitting requests for general rulings and individual advisory opinions.

.0503 Disposition of Requests

(a) The board shall exercise discretion in determining which requests for rulings and opinions shall be considered. The board may refuse to issue a ruling or opinion if it determines that the request is frivolous, if the matter has already been considered and decided by the board, or if it is the board's opinion that the matter is not one with respect to which a ruling or determination would be desirable or appropriate.

(b) If the board refuses to issue a ruling or opinion, it shall notify the person submitting the request in writing and give the reasons for the refusal. If the board decides to issue a ruling or opinion, it shall issue such ruling or opinion within 60 days of receipt of the request. The board shall notify the person submitting the request of its ruling or opinion in writing.

.0504 Public Disclosure and Inspection

General rulings and individual advisory opinions shall be available for public inspection upon issuance by the board. The person requesting the ruling or opinion shall not be identified.

.0600 -- EXCEPTIONS TO PROHIBITIONS OF THE ORDER

.0601 Submission of Request for Exception

(a) Any person subject to Executive Order Number One by James G. Martin may request an exception to the specific prohibition set forth in Section 5(b) of the Order.

(b) A request for an exception shall be submitted in writing to the administrative assistant and shall include the following information:

- (1) The name, job title, mailing address, and telephone number of the persons submitting the request.
- (2) A concise description of the public office of public employment in question and the nature of any compensation involved.

(c) The administrative assistant may prepare and distribute standard forms for use in submitting requests for such exceptions.

.0602 Disposition of Requests

(a) The board shall rule on a request for an exception within 60 days of receipt of the request.

(b) Upon consideration of a request for an exception, the board may rule on the request, continue consideration for the purpose of obtaining additional information, or request the person seeking the exception to appear before the board.

(c) The board may allow an exception only if it finds that the activity in question does not violate the intent of the Order and in no way interferes or conflicts with the proper and effective discharge of the official duties of the person making the request.

(d) The board's ruling on the request shall be final.

(e) The person submitting the request shall be notified in writing of the board's decision. If the request is denied, the reasons shall be stated.

.0603 Public Disclosure and Inspection

The board's rulings on requests for exceptions shall be available for public inspection upon issuance by the board. The person requesting the exception shall not be identified.

.0700 -- COMPLAINTS

.0701 Definitions

The following words and phrases, when used in this section, shall have the meanings given to them herein:

- (a) Order: Executive Order Number One by James G. Martin.
- (b) Complaint: A written and signed statement filed with the NC Board of Ethics alleging a violation of the Order by a person subject to the Order.
- (c) Complainant: A person filing a complaint.
- (d) Respondent: A person against whom a complaint has been filed.
- (e) Proper Officials: The official responsible for employment or appointment of the respondent and the Governor, unless the respondent is an employee of one of the other principal departments of state government listed in Section 8 of the Order, in which case the proper official shall be the head of that department.

.0702 Form and Filing

- (a) A complaint may be filed by any person.
- (b) Complaints shall be submitted in writing to the administrative assistant and shall contain:
 - (1) The name, mailing address, and signature of the complainant.
 - (2) The name and job title or appointive position of the respondent.
 - (3) A concise statement of the nature of the complaint and of the facts giving rise to it.
- (c) The administrative assistant may prepare and distribute forms for use in the filing of complaints.

.0703 Initial Review

Upon receipt of the complaint, the chairman shall review the complaint to determine whether the person against whom the complaint has been filed is subject to the Order and whether the activity alleged is a violation of the Order. If the answer to either inquiry is "no" the complaint shall be returned to the complainant with an explanatory letter.

.0704 Preliminary Investigation

- (a) If the administrative assistant determines that the complaint is against a person who is subject to the Order and that it alleges a violation of the Order, the board and/or its staff

shall undertake a preliminary investigation. Such investigation may involve one or more of the following:

- (1) A request for more information from the complainant.
- (2) Notice to the respondent that the complaint has been filed and a request for information from the respondent. The complainant may or may not be identified at this stage.
- (3) Investigation by the board and/or its staff or by other appropriate state agencies.

(b) Upon completion of the preliminary investigation, the board shall determine whether sufficient facts exist to indicate a violation of the Order. The complaint shall be disposed of as follows:

- (1) If the facts indicate a violation of a criminal statute, the matter shall be referred to the State Bureau of Investigation and/or the Wake County District Attorney.
- (2) If the facts do not indicate a violation of the Order or of any criminal statute, the complaint shall be dismissed with notice to the complainant and to the respondent if the respondent has been notified of the complaint.
- (3) If the facts indicate a violation of the Order which is not a violation of a criminal statute, the respondent shall be notified of the complaint and the complainant shall be identified if such notice has not been given earlier.

.0705 Conference with Board

- (a) The respondent shall be given an opportunity to be heard by the board. A conference may be held at the request of the respondent or at the request of the board.
- (b) The complainant shall be notified of the conference and may be allowed or requested to attend by the board. If the board requests that the complainant attend and the complainant does not, the board may dismiss the complaint.
- (c) The conference with the board shall be informal. Board members shall take the initiative in questioning the respondent and any other persons who may be present. There shall be no sworn testimony, no right to cross-examine, and no formal record.

.0706 Submission of Report to Proper Officials

- (a) Upon completion of the investigation and conference, the board shall summarize the evidence in its hands and forward such evidence to the proper officials. The board shall not make findings of fact or recommend disciplinary action.
- (b) The complainant and the respondent shall be provided with a copy of the board's report.

Public Disclosure

- (a) The complaint, all information derived from the investigation, conference, and the report shall be retained in the respondent's confidential file.
- (b) A summary of the nature of the complaint and the evidence presented to the board shall be placed in the public file without identifying the complainant or the respondent.

**BUDGET MANUAL
STATE OF NORTH CAROLINA
OFFICE OF STATE BUDGET AND MANAGEMENT**

Subject: Miscellaneous

Section: 5

Effective: November 1, 1987

Page 48

E. Honorariums

1. State Employees

- a. A state employee shall not accept an honorarium for an activity conducted where state-reimbursed travel, work time or resources are used or where the activity can be construed as having a relationship to the employee's state position; such activity would be considered official duty on behalf of the state.
- b. An employee may receive an honorarium for activities performed during regular non-working hours or while on annual leave if the following conditions are met:
 - (1) All expenses are the total responsibility of the employee or the non-state sponsor of the activity in which the employee is participating.
 - (2) The activity has no relationship to the employee's state duties.
- c. Nothing in this policy shall be interpreted as preventing the payment to the state by an outside source for actual expenses incurred by an employee in an activity, or the payment of a fee to the state (in lieu of an honorarium to the individual) for the services of an employee. Any such payments made to the state should be deposited to the departmental account and an appropriate entry should be made to the revenue line item: Refund of Travel Expenditures or similar account code.

2. Non-State Employees

Honorariums are the responsibility of each department, institution, or agency contracting for the personal services of a non-state employee. A form letter shall be developed by each department for such invitations and shall include the amount of the honorarium to be offered. This amount shall cover any and all expenses incurred by the non-state employee in lieu of a per diem.

JUDICIAL BRANCH

NORTH CAROLINA CODE OF JUDICIAL CONDUCT

Exercising the authority vested in it by the Constitution of North Carolina and by Chapter 89, Session Laws of 1973, the Supreme Court of North Carolina prescribes for the guidance of all justices and judges of the General Court of Justice the following standards of judicial conduct:

CANON 1

*A Judge Should Uphold the Integrity and
Independence of the Judiciary*

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

CANON 2

*A Judge Should Avoid Impropriety and the Appearance of
Impropriety in All His Activities*

- A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- B. A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness.

CANON 3

*A Judge Should Perform the Duties of His Office Impartially
and Diligently*

The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties, the following standards apply:

- A. Adjudicative Responsibilities.
 - (1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.
 - (2) A judge should maintain order and decorum in proceedings before him.

- (3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.
- (4) A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding. A judge, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before him.
- (5) A judge should dispose promptly of the business of the court.
- (6) A judge should abstain from public comment about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to his direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

CANON 3A(7) below was suspended by successive orders of the Supreme Court until June 30, 1990. The order follows the text of the suspended Canon.

- (7) A judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions, except that a judge may authorize:
 - (a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, or for other purposes of judicial administration;
 - (b) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings;
 - (c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:
 - (i) the means of recording will not distract participants or impair the dignity of the proceedings;
 - (ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;
 - (iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and
 - (iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

The order allowing electronic and still photography coverage of public judicial proceedings on an experimental basis in the appellate and trial courts of this State was adopted on 21 September 1982 and was successively extended to 30 June 1990. (322 N.C. ____ (1988))

The order follows:

**ORDER CONCERNING ELECTRONIC MEDIA
AND STILL PHOTOGRAPHY COVERAGE OF
PUBLIC JUDICIAL PROCEEDINGS**

1. Definition.

The terms "electronic media coverage" and "electronic coverage" are used in the generic sense to include coverage by television, motion picture and still photography cameras, broadcast microphones and recorders.

2. Coverage allowed.

Electronic media and still photography coverage of public judicial proceedings shall be allowed in the appellate and trial courts of this state, subject to the conditions below.

(a) The presiding justice or judge shall at all times have authority to prohibit or terminate electronic media and still photography coverage of public judicial proceedings, in the courtroom or the corridors immediately adjacent thereto. (Amended 319 N.C. ____ (1987)).

(b) Coverage of the following types of judicial proceedings is expressly prohibited: adoption proceedings, juvenile proceedings, proceedings held before clerks of court, proceedings held before magistrates, probable cause proceedings, child custody proceedings, divorce proceedings, temporary and permanent alimony proceedings, proceedings for the hearing of motions to suppress evidence, proceedings involving trade secrets, and in camera proceedings.

(c) Coverage of the following categories of witnesses is expressly prohibited: police informants, minors, undercover agents, relocated witnesses, and victims and families of victims of sex crimes.

(d) Coverage of jurors is prohibited expressly at any stage of a judicial proceeding, including that portion of a proceeding during which a jury is selected. The trial judge shall inform all potential jurors at the beginning of the jury selection process of the restrictions of this particular provision which is designated 2(d).

3. Location of equipment and personnel.

(a) The location of equipment and personnel necessary for electronic media and still photographic coverage of trial proceedings shall be at a place either inside or outside the courtroom in such a manner that equipment and personnel are completely obscured from view from within the courtroom and not heard by anyone inside the courtroom.

(i) If located within the courtroom, this area must be set apart by a booth or other partitioning device constructed therein at the expense of

the media. Such construction must be in harmony with the general architectural style and decor of the courtroom and must meet the approval of the Senior Resident Superior Court Judge and the governing body of the county or municipality that owns the facility.

(ii) If located outside the courtroom, any booth or other partitioning device must be built so that passage to and from the courtroom will not be obstructed. This arrangement must meet the approval of the Senior Resident Superior Court Judge and the governing body of the county or municipality that owns the facility.

(b) Appropriate openings to allow photographic coverage of the proceedings under these rules may be made in the booth or partitioning device, provided that no one in the courtroom will see or hear any photographic or audio equipment or the personnel operating such equipment. Those in the courtroom are not to know when or if any such equipment is in operation.

(c) The presiding judge may, however, exercise his or her discretion to permit the use of electronic media and still photography coverage without booths or other restrictions set out in 3(a) and 3(b) if the use can be made without disruption of the proceedings and without distraction to the jurors and other participants. Such permission may be withdrawn at any time. (Amended 319 N. C. ____ (1987))

(d) Video tape recording equipment which is not a component part of a television camera shall be located in an area remote from the courtroom. (Amended 319 N.C. ____ (1987))

(e) Media personnel shall not exit or enter the booth area or courtroom once the proceedings are in session except during a court recess or adjournment. (Amended 307 N.C. 741 (1982), 319 N.C. ____ (1987))

(f) Electronic media equipment and still photography equipment shall not be taken into the courtroom or removed from the designated media area except at the following times:

- (i) prior to the convening of proceedings;
- (ii) during the luncheon recess;
- (iii) during any court recess with the permission of the presiding justice or judge (Amended 307 N.C. 741 (1982), 319 N.C. ____ (1987)); and
- (iv) after adjournment for the day of the proceedings.

(g) The Chief Justice of the Supreme Court, and the Chief Judge of the Court of Appeals, may waive the requirements of rule 3(a) and (b) with respect to judicial proceedings in the Supreme Court and in the Court of Appeals, respectively. (Amended 307 N.C. 741 (1982))

4. Official representatives of the media.

(a) This Court hereby designates the North Carolina Association of Broadcasters, the Radio and Television News Directors Association of the

Carolinas, and the North Carolina Press Association, as the official representatives of the news media. The governing boards of these associations shall designate one person to represent the television media, one person to represent the radio broadcasters, and one person to represent still photographers in each county in which electronic media and still photographic coverage is desired. The names of the persons so designated shall be forwarded to the Senior Resident Superior Court Judge, the Director of the Administrative Office of the Courts, and the county manager or other official responsible for administrative matters in the county or municipality in which coverage is desired. Thereafter, these persons shall conduct all negotiations with the appropriate officials concerning the construction of the booths or partitioning devices referred to above. Such persons shall also be the only persons authorized to speak for the media to the presiding judge concerning the coverage of any judicial proceedings.

(b) It is the express intent and purpose of this rule to preclude judges and other officials from having to "negotiate" with various representatives of the news media. Since these rules require pooling of equipment and personnel, cooperation by the media is of the essence and the designation of three media representatives is expressly intended to prevent presiding judges from having to engage in discussion with others from the media.

5. Equipment and personnel.

(a) Not more than two television cameras shall be permitted in any trial or appellate court proceedings.

(b) Not more than one still photographer, utilizing not more than two still cameras with not more than two lenses for each camera and related equipment for print purposes, shall be permitted in any proceeding in a trial or appellate court.

(c) Not more than one wired audio system for radio broadcast purposes shall be permitted in any proceeding in a trial or appellate court. Audio pickup for all media purposes shall be accomplished with existing audio systems present in the court facility. If no technically suitable audio system exists in the court facility, microphones and related wiring essential for media purposes may be installed and maintained at media expense. The microphones and wiring must be unobtrusive and shall be located in places designated in advance of any proceeding by the Senior Resident Superior Court Judge of the judicial district in which the court facility is located. Such modifications or additions must be approved by the governing body of the county or municipality which owns the facility. Provided, however, hand-held audio tape recorders or camera-mounted video-audio recorders may be used upon prior notification to, and with the approval of, the presiding judge; such approval may be withdrawn at any time. (Amended 322 N.C. ____ (1988))

(d) Any "pooling" arrangements among the media required by these limitations on equipment and personnel shall be the sole responsibility of the media without calling upon the presiding judge to mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. In the absence of advance media agreement on disputed equipment or personnel issues, the presiding judge shall exclude all contesting media personnel from a proceeding.

(e) In no event shall the number of personnel in the designated area exceed the number necessary to operate the designated equipment or which can comfortably be secluded in the restricted area.

6. Sound and light criteria.

(a) Only television photographic and audio equipment which does not produce distracting sound or light shall be employed to cover judicial proceedings. No artificial lighting device of any kind shall be employed in connection with the television camera.

(b) Only still camera equipment which does not produce distracting sound or light shall be employed to cover judicial proceedings. No artificial lighting device of any kind shall be employed in connection with a still camera.

7. Courtroom light sources.

With the concurrence of the Senior Resident Superior Court Judge of the judicial district in which a court facility is situated, modifications and additions may be made in light sources existing in the facility, provided such modifications or additions are installed and maintained without public expense and provided such modifications or additions are approved by the governing body of the county or municipality which owns the facility.

8. Conferences of counsel.

To protect the attorney-client privilege and the right to counsel, there shall be no audio pickup or broadcast of conferences which occur in a court facility between attorneys and their clients, between co-counsel of a client, between adverse counsel, or between counsel and the presiding judge held at the bench.

9. Impermissible use of media material.

None of the film, video tape, still photographs or audio reproductions developed during or by virtue of coverage of a judicial proceeding shall be admissible as evidence in the proceeding out of which it arose, any proceeding subsequent and collateral thereto, or upon any retrial or appeal of such proceedings.

B. Administrative Responsibilities.

- (1) A judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.
- (2) A judge should require his staff and court officials subject to his direction and control to observe the standards of fidelity and diligence that apply to him.
- (3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

(4) A judge should not make unnecessary appointments. He should exercise his power of appointment only on the basis of merit, avoiding nepotism and favoritism. He should not approve compensation of appointees beyond the fair value of services rendered.

C. Disqualification.

(1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where:

- (a) he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
- (b) he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;
- (c) he knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;
- (d) he or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
 - (i) is a party to the proceeding, or an officer, director, or trustee of a party;
 - (ii) is acting as a lawyer in the proceeding;
 - (iii) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;
 - (iv) is to the judge's knowledge likely to be a material witness in the proceeding.

(2) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(3) For the purposes of this section:

- (a) the degree of relationship is calculated according to the civil law system;
- (b) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(c) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

- (i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;
- (ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;
- (iii) the proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;
- (iv) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

D. Remittal of Disqualification.

A judge disqualified by the terms of Canon 3C(1)(c) or Canon 3C(1)(d) may, instead of withdrawing from the proceeding, disclose on the record the basis of his disqualification. If, based on such disclosure, the parties and lawyers, independently of the judge's participation, all agree in writing that the judge's relationship is immaterial or that his financial interest is insubstantial, the judge is no longer disqualified, and may participate in the proceeding. The agreement, signed by all parties and lawyers, shall be incorporated in the record of the proceeding.

CANON 4

A Judge May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice

A judge, subject to the proper performance of his judicial duties, may engage in the following quasi-judicial activities, if in doing so he does not cast doubt on his capacity to decide impartially any issue that may come before him:

- A. He may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.
- B. He may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and he may otherwise consult with an executive or legislative body or official.

C. He may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. He may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. He may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

CANON 5

*A Judge Should Regulate His Extra-Judicial Activities
to Minimize the Risk of Conflict with His Judicial Duties*

A. Avocational Activities. A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of his office or interfere with the performance of his judicial duties.

B. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

- (1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him or will be regularly engaged in adversary proceedings in any court.
- (2) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of his office for that purpose, but he may be listed as an officer, director, or trustee of such an organization.
- (3) A judge should not give investment advice to such an organization, but he may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

C. Financial Activities.

- (1) A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position, or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves.
- (2) Subject to the requirements of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity, but should not serve as an officer, director, manager, advisor, or employee of any business.

- (3) A judge should manage his investments and other financial interests to minimize the number of cases in which he is disqualified. As soon as he can do so without serious financial detriment, he should divest himself of investments and other financial interests that might require frequent disqualification.
- (4) Neither a judge nor a member of his family residing in his household should accept a gift, bequest, favor, or loan from anyone except as follows:
 - (a) a judge may accept a gift incident to a public testimonial to him; books supplied by publishers on a complimentary basis for official use; or an invitation to the judge and his spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;
 - (b) a judge or a member of his family residing in his household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;
 - (c) a judge or a member of his family residing in his household may accept any other gift, bequest, favor, or loan only if the donor is not a party or other person whose interests have come or are likely to come before him, and, if its value exceeds \$100, the judge reports it in the same manner as he reports compensation in Canon 6C.
- (5) For the purposes of this section "member of his family residing in his household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of his family, who resides in his household.
- (6) A judge is not required by this Code to disclose his income, debts, or investments, except as provided in this Canon and Canons 3 and 6.
- (7) Information acquired by a judge in his judicial capacity should not be used or disclosed by him in financial dealings or for any other purpose not related to his judicial duties.

D. Fiduciary Activities. A judge should not serve as the executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trust, or person of a member of his family, and then only if such service will not interfere with the proper performance of his judicial duties. "Member of his family" includes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. As a family fiduciary a judge is subject to the following restrictions:

- (1) He should not serve if it is likely that as a fiduciary he will be engaged in proceedings that would ordinarily come before him, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which he serves or one under its appellate jurisdiction.
- (2) While acting as a fiduciary a judge is subject to the same restrictions on financial activities that apply to him in his personal capacity.

E. Arbitration. A judge should not act as an arbitrator or mediator.

F. Practice of Law. A judge should not practice law.

G. Extra-judicial Appointments. A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

CANON 6

*A Judge Should Regularly File Reports of Compensation
Received for Quasi-Judicial and Extra-Judicial Activities*

A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

- A. Compensation. Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.
- B. Expense Reimbursement. Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his spouse. Any payment in excess of such an amount is compensation.
- C. Public Reports. A judge shall report the name and nature of any source or activity from which he received more than \$1,000 in income during the calendar year for which the report is filed. Any required report shall be made annually and filed as a public document as follows: The members of the Supreme Court shall file such reports with the Clerk of the Supreme Court; the members of the Court of Appeals shall file such reports with the Clerk of the Court of Appeals; and each Superior Court Judge, Regular, Special, and Emergency, and each District Court Judge, shall file such report with the Clerk of the Superior Court of the County in which he resides. For each calendar year, such report shall be filed not later than May 15th of the following year. (Amended 286 N.C. 729 (1974), 308 N.C. 807 (1983))

CANON 7

A Judge Should Refrain from Political Activity Inappropriate to His Judicial Office

A. Political Conduct in General.

- (1) A judge or a candidate for election to judicial office should not:
 - (a) act as a leader or hold any office in a political organization. For example, he may not attend a political convention on any level as a delegate; nor may he preside or serve as an officer at any precinct meeting, convention, or other political convocation. He may attend a precinct meeting, convention, or other political convocation provided he does not violate any other Canon, particularly 7A(1)(b) or (c).
 - (b) make speeches for a political organization or candidate or publicly endorse a candidate for public office; provided, a judge who is not at that time a candidate for election to judicial office may endorse, as between contestants for a judicial office, the candidate he considers best qualified and may contribute to a campaign fund in behalf of such candidate, but may not solicit funds in behalf of such candidate. (Amended 286 N.C. 729 (1974))
 - (c) solicit funds for a political organization or candidate.
 - (d) make financial contributions to any candidate for political office, except as expressly provided in subsection (b) hereinabove, unless the candidate is a member of the judge's or judicial candidate's family.
- (2) A judge holding an office filled by public election between competing candidates, or a candidate for such office, may attend political gatherings, speak to such gatherings on his own behalf when he is a candidate for election or re-election, identify himself as a member of a political party, and contribute to a political party or organization.
- (3) A judge should resign his office when he becomes a candidate either in a party primary or in a general election for a non-judicial office, except that he may continue to hold his judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if he is otherwise permitted by law to do so.
- (4) The foregoing provisions of Canon 7A do not prohibit a judge's spouse or any other adult member of his family from engaging in political activity provided the spouse or other family member acts in accordance with his or her individual convictions, on his or her own initiative, and not as alter ego of the judge himself.

B. Campaign Conduct.

- (1) A candidate, including an incumbent judge, for a judicial office that is filled either by public election between competing candidates or on the basis of a merit system election:
 - (a) should maintain the dignity appropriate to judicial office, and should encourage members of his family to adhere to the same standards of political conduct that apply to him;
 - (b) should prohibit public officials or employees subject to his direction or control from doing for him what he is prohibited from doing under this Canon; and except to the extent authorized under subsection B(2) or B(3), he should not allow any other person to do for him what he is prohibited from doing under this Canon;
 - (c) should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his views on disputed legal or political issues; or misrepresent his identity, qualifications, present position, or other fact.
- (2) A candidate, including an incumbent judge, for a judicial office that is filled by public election between competing candidates should not himself solicit campaign funds, but he may establish committees of responsible persons to secure and manage the expenditure of funds for his campaign and to obtain public statements of support for his candidacy. Such committees are not prohibited from soliciting campaign contributions and public support from lawyers. A candidate should not use or permit the use of campaign contributions for the private benefit of himself or members of his family.
- (3) An incumbent judge who is a candidate for retention in or re-election to office without a competing candidate, and whose candidacy has drawn active opposition, may campaign in response thereto and may obtain publicly stated support and campaign funds in the manner provided in subsection B(2).

EFFECTIVE DATE OF COMPLIANCE

A person to whom this Code becomes applicable should arrange his affairs as soon as reasonably possible to comply with it. If, however, the demands on his time and the possibility of conflicts of interest are not substantial, a person who holds judicial office on the date this Code becomes effective may:

- (a) continue to act as an officer, director, or non-legal advisor of a family business;
- (b) continue to act as an executor, administrator, trustee, or other fiduciary for the estate or person of one who is not a member of his family.

CHAPTER 7A.

JUDICIAL DEPARTMENT.

ARTICLE 30.

Judicial Standards Commission.

§7A-375. Judicial Standards Commission.

(a) The Judicial Standards Commission shall consist of: one Court of Appeals judge, one superior court judge, and one district court judge, each appointed by the Chief Justice of the Supreme Court; two members of the State Bar who have actively practiced in the courts of the State for at least 10 years, elected by the State Bar Council; and two citizens who are not judges, active or retired, nor members of the State Bar, appointed by the Governor. The Court of Appeals judge shall act as chairman of the Commission.

(b) Terms of Commission members shall be for six years, except that, to achieve overlapping of terms, one of the judges, one of the practicing members of the State Bar, and one of the citizens shall be appointed initially for a term of only three years. No member who has served a full six-year term is eligible for reappointment. If a member ceases to have the qualifications required for his appointment, he ceases to be a member. Vacancies are filled in the same manner as the original appointment, for the remainder of the term. Members who are not judges are entitled to per diem and all members are entitled to reimbursement for travel and subsistence expenses at the rate applicable to members of State boards and commissions generally, for each day engaged in official business.

(c) If a member of the Commission who is a judge becomes disabled, or becomes a respondent before the Commission, the Chief Justice shall appoint an alternate member to serve during the period of disability or disqualification. The alternate member shall be from the same division of the General Court of Justice as the judge whose place he takes. If a member of the Commission who is not a judge becomes disabled, the Governor, if he appointed the disabled member, shall appoint, or the State Bar Council, if it elected the disabled member, shall elect, an alternate member to serve during the period of disability. In a particular case, if a member disqualifies himself, or is successfully challenged for cause, his seat for that case shall be filled by an alternate member selected as provided in this subsection.

(d) A member may serve after expiration of his term only to participate until the conclusion of a formal proceeding begun before expiration of his term. Such participation shall not prevent his successor from taking office, but the successor may not participate in the proceeding for which his predecessor's term was extended. This subsection shall apply also to any judicial member whose membership on the Commission is automatically terminated by retirement or resignation from judicial office, or expiration of the term of judicial office. (1971, c. 590, s. 1; 1973, c. 50; 1975, c. 956, s. 13.)

§7A-376. Grounds for censure or removal.

Upon recommendation of the Commission, the Supreme Court may censure or remove any judge for willful misconduct in office, willful and persistent failure to perform his duties, habitual intemperance, conviction of a crime involving moral turpitude, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute. Upon recommendation of the Commission, the Supreme Court may remove any judge for mental or physical incapacity interfering with the performance of his duties, which is, or

is likely to become, permanent. A judge removed for mental or physical incapacity is entitled to retirement compensation if he has accumulated the years of creditable service required for incapacity or disability retirement under any provision of State law, but he shall not sit as an emergency justice or judge. A judge removed for other than mental or physical incapacity receives no retirement compensation, and is disqualified from holding further judicial office. (1971, c. 590, s. 1; 1979, c. 486, s. 2.)

§7A-377. Procedures; employment of executive secretary, special counsel or investigator.

(a) Any citizen of the State may file a written complaint with the Commission concerning the qualifications or conduct of any justice or judge of the General Court of Justice, and thereupon the Commission shall make such investigation as it deems necessary. The Commission may also make an investigation on its own motion. The Commission is authorized to issue process to compel the attendance of witnesses and the production of evidence, to administer oaths, to punish for contempt, and to prescribe its own rules of procedure. No justice or judge shall be recommended for censure or removal unless he has been given a hearing affording due process of law. All papers filed with and proceedings before the Commission are confidential, unless the judge involved shall otherwise request. The recommendations of the Commission to the Supreme Court, and the record filed in support of the recommendations are not confidential. Testimony and other evidence presented to the Commission is privileged in any action for defamation. No other publication of such testimony or evidence is privileged, except that the record filed with the Supreme Court continues to be privileged. At least five members of the Commission must concur in any recommendation to censure or remove any justice or judge. A respondent who is recommended for censure or removal is entitled to a copy of the proposed record to be filed with the Supreme Court, and if he has objections to it, to have the record settled by the Commission. He is also entitled to present a brief and to argue his case, in person and through counsel, to the Supreme Court. A majority of the members of the Supreme Court voting must concur in any order of censure or removal. The Supreme Court may approve the recommendation, remand for further proceedings, or reject the recommendation. A justice of the Supreme Court or a member of the Commission who is a judge is disqualified from acting in any case in which he is a respondent.

(b) The Commission is authorized to employ an executive secretary to assist it in carrying out its duties. For specific cases, the Commission may also employ special counsel or call upon the Attorney General to furnish counsel. For specific cases the Commission may also employ an investigator or call upon the Director of the State Bureau of Investigation to furnish an investigator. While performing duties for the Commission such executive secretary, special counsel or investigator shall have authority throughout the State to serve subpoenas or other process issued by the Commission in the same manner and with the same effect as an officer authorized to serve process of the General Court of Justice. (1971, c. 590, s. 1; 1973, c. 808.)

§7A-378. Censure or removal of justice of Supreme Court.

(a) The recommendation of the Judicial Standards Commission for censure or removal of any justice of the Supreme Court for any grounds provided by G.S. 7A-376 shall be made to, and the record filed with, the Court of Appeals, which shall have and shall proceed under the same authority for censure or removal of any justice as is granted to the Supreme Court under G.S. 7A-376 and 7A-377(a) for censure or removal of any judge.

(b) The proceeding shall be heard by a panel of the Court of Appeals consisting of the Chief Judge, who shall be the presiding judge of the panel, and six other judges, the senior in service, excluding the judge who is chairman of the commission. For good cause, a judge may be excused by a majority of the panel. If the Chief Judge is excused, the presiding judge shall be designated by a majority of the panel. The vacancy created by an excused judge shall be filled by the judge of the court who is next senior in service. (1979, c. 486, s. 1.)

RULES OF THE JUDICIAL STANDARDS COMMISSION

Adopted January 1, 1973.

Rule	Rule
1. Authority	11. Witnesses; Oaths; Subpoenas; Compensation
2. Organization; Officers; Meetings; Quorum	12. Medical Examination
3. Interested Party	13. Rights of Respondent
4. Confidentiality of Proceedings	14. Evidence
5. Defamatory Matter	15. Amendments to Notice or Answer
6. Unfounded or Frivolous Complaints	16. Commission Voting
7. Preliminary Investigation	17. Contempt
8. Notice of Formal Proceedings	18. Record of Proceedings
9. Answer	19. Transmission of Recommendations to Supreme Court
10. Formal Hearings	20. Proceedings in the Supreme Court

Rule 1

Authority

These rules are promulgated pursuant to the authority contained in G.S. 7A-377, and are effective January 1, 1973.

Rule 2

Organization; Officers; Meetings; Quorum

The Commission shall have a Chairman, who is the Court of Appeals member, and a Vice-Chairman, who shall be elected by the members. The Vice-Chairman shall preside in the absence of the Chairman. The Commission shall also have a Secretary, who shall be elected by the members and perform such duties as the Commission may assign. The Vice-Chairman and Secretary shall serve for one-year terms, and may succeed themselves.

The Commission shall meet on the call of the Chairman or of any four members.

A quorum for the conduct of business shall consist of any four members, except as otherwise provided in these rules.

Each member of the Commission, including the Chairman, Vice-Chairman, Secretary, or other presiding member, shall be a voting member.

The Commission shall ordinarily meet in Raleigh, but may meet anywhere in the State. The Commission's address is P. O. Box 1122, Raleigh, N. C. 27602.

Rule 3

Interested Party

A judge who is a member of the Commission is disqualified from acting in any case in which he is a respondent, except in his own defense.

Rule 4

Confidentiality of Proceedings

(a) All papers filed with and proceedings before the Commission are confidential, unless the respondent judge otherwise requests. The recommendations of the Commission to the Supreme Court, and the record filed in support of the recommendations are not confidential.

(b) At the request of the judge involved:

1) when a judge is publicly charged with involvement in proceedings before the Commission and the result of such publicity is substantial unfairness to him, the Commission may issue a short statement of clarification and correction; or

2) when a judge is publicly associated with having engaged in serious reprehensible conduct or having committed a major offense, and after a preliminary investigation or a formal hearing it is determined that there is no basis for further proceedings or recommendations, the Commission may issue a short explanatory statement.

(c) Upon resolution of the Commission:

when a formal hearing has been ordered in a proceeding and the Commission determines that the subject matter is generally known to the public and in which there is broad public interest, and the Commission further determines that confidence in the administration of justice is threatened due to lack of information concerning the status of the proceeding and the requirements of due process, the Commission may, after permitting the judge involved the right of consultation with the Commission, issue one or more short announcements confirming the hearing, clarifying the procedural aspects, and defending the right of the judge to a fair hearing.

(d) All written communications to a judge (counsel, guardian, guardian ad litem) pursuant to these rules shall be enclosed in a securely sealed inner envelope marked "Confidential."

Rule 5

Defamatory Matter

Testimony and other evidence presented to the Commission is privileged in any action for defamation. No other publication of such evidence shall be privileged, except that the record filed by the Commission in the Supreme Court continues to be privileged.

Rule 6

Unfounded or Frivolous Complaints

(a) Upon receipt of a written complaint that is obviously unfounded or frivolous, the Commission shall write a short letter of explanation to the

complainant. The judge involved shall not be notified of these complaints unless otherwise determined.

(b) A determination that a complaint is unfounded or frivolous may be made by two Commission members one of whom must be a judge or attorney. Such determination may be reconsidered by the full Commission at its next meeting.

Rule 7

Preliminary Investigation

(a) The Commission, upon receiving a written complaint, not obviously unfounded or frivolous, alleging facts indicating that a judge may be guilty of willful misconduct in office, willful and persistent failure to perform his duties, habitual intemperance, conviction of a crime involving moral turpitude, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or alleging that a judge is suffering from a mental or physical incapacity interfering with the performance of his duties, which incapacity is, or is likely to become, permanent, shall make a preliminary investigation to determine whether formal proceedings should be instituted. The Commission may also make a preliminary investigation on its own motion.

(b) The judge shall be notified of the investigation, the nature of the charge, and whether the investigation is on the Commission's own motion or upon written complaint, and afforded a reasonable opportunity to present such relevant matters as he may choose. Such notice shall be in writing, and may be transmitted by a member of the Commission, any person of suitable age and discretion designated by it, or by certified or registered mail.

If the preliminary investigation does not disclose sufficient cause to warrant further proceedings, the judge shall be so notified, and the case closed.

Rule 8

Notice of Formal Proceedings

After the preliminary investigation has been completed, if the Commission concludes that formal proceedings should be instituted, it shall promptly so notify the judge. Such notice shall be entitled "BEFORE THE JUDICIAL STANDARDS COMMISSIONS, Inquiry Concerning a Judge, No....." The notice shall identify the complainant, and shall specify in ordinary and concise language the charge or charges against the judge. The judge shall be advised of alleged facts upon which such charges are based, and a copy of the verified complaint shall be furnished to the judge, and the notice shall advise the judge of his right to file a written, verified answer to the charges against him within 20 days after service of the notice upon him. A notice shall be served upon the judge by personal service by a member of the Commission, or some person of suitable age and discretion designated by it. If, after reasonable efforts to do so, personal service cannot be effected, service by certified or registered mail is authorized. Notice by mail shall be addressed to the judge at his residence of record.

Rule 9

Answer

(a) Within 20 days after service of the complaint and notice of formal proceedings the judge may file with the Commission an original and 8 copies of an answer, which shall be verified.

(b) The notice, complaint and answer constitute the pleadings. No further pleadings may be filed, and no motions may be filed against any of the pleadings.

Rule 10

Formal Hearings

Upon the filing of an answer, or upon the expiration of the time allowed for its filing, the Commission shall order a formal hearing before it concerning the charges. The hearing shall be held no sooner than 10 days after filing of the answer, or after the deadline for filing of the answer, unless the judge consents to an earlier hearing. The notice shall be served in the same manner as the notice of charges under Rule 8.

At the date set for the formal hearing, the Commission shall proceed whether or not the judge has filed an answer, and whether or not he appears in person or through counsel, but failure of the judge to answer or to appear shall not be taken as evidence of the facts alleged in the charges.

Special counsel (who shall be an attorney) employed by the Commission, or counsel supplied by the Attorney General at the request of the Commission, shall present the evidence in support of the charges. Counsel shall be sworn to preserve the confidential nature of the proceeding.

The hearing shall be recorded by a reporter employed by the Commission for this purpose. The reporter shall also be sworn to preserve the confidential nature of the proceeding. (Amended December 12, 1975.)

Rule 11

Witnesses; Oaths; Subpoenas; Compensation

Witnesses shall take an oath or affirmation to tell the truth and not to divulge the name of the judge or the existence of the proceeding until the matter is no longer confidential under these rules. The oath to witnesses may be administered by any member of the Commission.

Subpoenas to witnesses shall be issued in the name of the State, and shall be signed by a member of the Commission. They shall be served, without fee, by any officer authorized to serve process of the General Court of Justice.

Witnesses are entitled to the same compensation and reimbursement for travel expenses as witnesses in a civil case in the General Court of Justice. Vouchers authorizing disbursements for Commission witnesses shall be signed by the Chairman or Secretary of the Commission.

Rule 12

Medical Examination

When the mental or physical health of a judge is in issue, the Commission may request the judge to submit to an examination by a licensed physician or physicians of its choosing. If the judge fails to submit to the examination, the Commission may take his failure into account, unless it has good reason to believe that the judge's failure was due to circumstances beyond his control. The judge shall be furnished a copy of the report of any examination conducted under this rule.

The examining physician or physicians shall receive the fee of an expert witness, to be set by the Commission.

Rule 13

Rights of Respondent

In formal hearings involving his censure, removal, or retirement, a judge shall have the right and opportunity to defend against the charges by introduction of evidence, representation by counsel, and examination and cross-examination of witnesses. He shall also have the right to the issuance of subpoenas for attendance of witnesses to testify or to produce books, papers, and other evidentiary matter.

A copy of the transcript of proceedings prepared for transmission to the Supreme Court shall be furnished to the judge and, if he has objections to it, he may within 10 days present his objections to the Commission, and the Chairman or Vice-Chairman or his designee shall consider his objections and settle the record prior to transmitting it to the Supreme Court.

The judge has the right to have all or any portion of the testimony in the hearings transcribed at his own expense.

Once the judge has informed the Commission that he has counsel, a copy of any notices, pleadings, or other written communications (other than the transcript) sent to the judge shall be furnished to counsel by any reliable means. (Amended December 12, 1975; January 27, 1978.)

Rule 14

Evidence

At a formal hearing before the Commission, legal evidence only shall be received, and oral evidence shall be taken only on oath or affirmation.

Rulings on evidentiary matters shall be made by the Chairman, or the Vice-Chairman presiding in his absence. (Amended December 12, 1975.)

Rule 15

Amendments to Notice or Answer

The Commission, at any time prior to its recommendation, may allow or require amendments to the notice of formal proceedings, and may allow amendments to the answer. The notice may be amended to conform to proof or to set forth additional facts, whether occurring before or after the commencement of the hearings. In case such an amendment is made, the

judge shall be given reasonable time both to answer the amendment and to prepare and present his defense against the matters charged thereby.

Rule 16

Commission Voting

The affirmative vote of at least five members of the Commission is necessary to recommend to the Supreme Court censure or removal of a judge. A vote of four (a quorum) is necessary for any other official action, except as specified in Rule 6 for disposing of unfounded or frivolous complaints.

Rule 17

Contempt

The Commission has the same power as a trial court of the General Court of Justice to punish for contempt, or for refusal to obey lawful orders or process issued by the Commission.

Rule 18

Record of Proceedings

The Commission shall keep a record of all preliminary investigations and formal proceedings concerning a judge. In formal hearings testimony shall be recorded verbatim, and if a recommendation to the Supreme Court for censure or removal is made, a transcript of the evidence and all proceedings therein shall be prepared, and the Commission shall make written findings of fact and conclusions of law in support of its recommendation. (Amended December 12, 1975.)

Rule 19

Transmission of Recommendations to Supreme Court

After reaching a recommendation to censure or remove a judge, when 10 days have expired after the transcript of the proceeding has been transmitted to the judge and no objection has been filed, or when the record is settled after objection has been made, the Commission shall promptly file with the Clerk of the Supreme Court the transcript of proceedings, and its findings of fact, conclusions of law, and recommendation, certified by the Chairman or Secretary. The Commission shall concurrently transmit to the judge a copy of the transcript (if the judge objected to the original transcript, and settlement proceedings resulting in changes in the transcript were had), its findings, conclusions, and recommendation. (Amended January 27, 1978.)

Rule 20

Proceedings in the Supreme Court

Proceedings in the Supreme Court shall be as prescribed by Supreme Court Rule. See G.S. 7A-33.

**RULES FOR SUPREME COURT REVIEW OF
RECOMMENDATIONS OF THE JUDICIAL
STANDARDS COMMISSION**

Adopted September 25, 1975.

Rule	Rule
1. Definitions	(d) Briefs
2. Petition for Hearing	(e) Oral Argument
(a) Notice to Judge	3. Decision by the Court
(b) Petition for Hearing	4. Reproduction of Record and Briefs
(c) Failure to File Petition	5. Costs

Rule 1

Definitions

In these rules, unless the context or subject matter otherwise requires:

- (a) Commission means the Judicial Standards Commission.
- (b) Judge or respondent means a justice or judge of the General Court of Justice who has been recommended for censure or removal under N. C. Gen. Stat. ch. 7A, art. 30 (1974 Supp.).
- (c) Court means the Supreme Court of North Carolina. Clerk means the Clerk of the Supreme Court.
- (d) Commission's attorney means the attorney who represented the Commission at the hearing which resulted in the recommendation under consideration by the Court.
- (e) The masculine gender includes the feminine gender.
- (f) Service of a document required to be served means either mailing the document by U.S. certified mail, return receipt requested, to the person to be served or service in the manner provided in Rule 4 of the N.C. Rules of Civil Procedure.

Rule 2

Petition for Hearing

(a) Notice to Judge. When the Commission, pursuant to its Rule 19, files with the Clerk a recommendation that a judge be censured or removed, the Clerk shall immediately transmit a copy of the recommendation by U.S. certified mail, return receipt requested, to the respondent named therein.

(b) Petition for Hearing. The respondent may petition the Court for a hearing upon the Commission's recommendation. The petition shall be signed by the judge or his counsel of record and specify the grounds upon which it is based. It must be filed with the Clerk within 10 days from the date shown on the return receipt as the time the respondent received the copy of the recommendation from the Clerk. At the time the petition is filed it shall be accompanied by a certificate showing service of a copy of the petition upon the Commission's attorney and its chairman or secretary. Upon the filing of his petition, the respondent becomes entitled under G.S. 7A-377 to file a brief and, upon filing a brief, to argue his case to the Court, in person and through counsel.

(c) **Failure to File Petition.** If a respondent fails to file a petition for hearing within the time prescribed, the Court will proceed to consider and act upon the recommendation on the record filed by the Commission. Failure to file a petition waives the right to file a brief and to be heard on oral argument.

(d) **Briefs.** Within 15 days after filing his petition, the respondent may file his brief with the Clerk. At the time the brief is filed the respondent shall also file a certificate showing service of a copy of the brief upon the Commission's attorney and its chairman or secretary. Within 15 days after the service of such brief upon him, the Commission's attorney may file a reply brief, together with a certificate of service upon the respondent and his attorney of record. The form and content of briefs shall be similar to briefs in appeals to the Court.

(e) **Oral Argument.** After the briefs are filed, and as soon as may be, the Court will set the case for argument on a day certain and notify the parties. Oral arguments shall conform as nearly as possible to the rules applicable to arguments on appeals to the Court. A judge who has filed a brief may, if he desires, waive the oral argument. A judge who has filed a petition but who has not filed a brief will not be heard upon oral argument.

Rule 3

Decision by the Court

After considering the record, and the briefs and oral arguments if any, the Court will act upon the Commission's recommendation as required by G.S. 7A-377. The decision on a recommendation for removal shall be by a written opinion filed and published as any other opinion of the Court. Decision on a recommendation for censure shall be by a written order filed with the Clerk and published in the Advance Sheets and bound volumes of the Supreme Court Reports. (Amended April 14, 1976.)

Rule 4

Reproduction of Record and Briefs

As soon as the Commission files with the Clerk a recommendation of censure or removal and the transcript of the proceedings on which it is based, the Clerk will reproduce and distribute copies of the record as directed by the Court. When briefs are filed, one copy will suffice. The Clerk will also reproduce and distribute copies of the briefs as directed by the Court.

Rule 5

Costs

If the Court dismisses the Commission's recommendation the costs of the proceeding will be paid by the State; otherwise, by the judge. Reproduction and other costs in this Court will be taxed as in appeals to the Court, except there will be no filing fee.

**CIVIL AND CRIMINAL STATUTES
ESTABLISHING MINIMUM STANDARDS
OF CONDUCT FOR STATE OFFICIALS OR
EMPLOYEES GENERALLY IN THEIR
OFFICE OR EMPLOYMENT**

CHAPTER 14.

CRIMINAL LAW.

ARTICLE 1.

Felonies and Misdemeanors.

'14-1.1. **Punishment for felonies occurring on and after July 1, 1981.**

(a) For felonies that occur on or after the effective date of Article 81A of Chapter 15A [July 1, 1981] of the General Statutes, the following punishments shall be applicable:

- (1) Class A felony shall be punishable by death or life imprisonment as provided by Article 100 of Chapter 15A of the General Statutes;
- (2) A Class B felony shall be punishable by life imprisonment;
- (3) A Class C felony shall be punishable by imprisonment up to 50 years, or by life imprisonment, or a fine, or both imprisonment and fine;
- (4) A Class D felony shall be punishable by imprisonment up to 40 years, or a fine or both;
- (5) A Class E felony shall be punishable by imprisonment up to 30 years, or a fine or both;
- (6) A Class F felony shall be punishable by imprisonment up to 20 years, or a fine or both;
- (7) A Class G felony shall be punishable by imprisonment up to 15 years, or a fine or both;
- (8) A Class H felony shall be punishable by imprisonment up to 10 years, or a fine or both;
- (9) A Class I felony shall be punishable by imprisonment up to five years, or a fine or both;
- (10) A Class J felony shall be punishable by imprisonment up to three years, or a fine or both.

(b) A felony not assigned by statute to any felony class shall be punishable as a Class J felony. (1979, c. 760, s. 1; 1979, 2nd Sess., c. 1316, s. 1; 1981, c. 662, s. 2.)

'14-3. **Punishment of misdemeanors, infamous offenses, offenses committed in secrecy and malice or with deceit and intent to defraud.**

(a) Except as provided in subsection (b), every person who shall be convicted of any misdemeanor for which no specific punishment is prescribed by statute shall be punishable by fine, by imprisonment for a term not exceeding two years, or by both, in the discretion of the court.

(b) If a misdemeanor offense as to which no specific punishment is prescribed be infamous, done in secrecy and malice, or with deceit and intent to defraud, the offender shall, except where the offense is a conspiracy to commit a misdemeanor, be guilty of a Class H felony. (R.C., c. 34, s. 120; Code, s. 1097; Rev., s. 3293; C.S., s. 4173; 1927, c. 1; 1967, c. 1251, s. 3; 1979, c. 760, s. 5; 1979, 2nd Sess., c. 1316, s. 2.)

ARTICLE 18.

Embezzlement.

'14-90. Embezzlement of property received by virtue of office or employment.

If any person exercising a public trust or holding a public office, or any guardian, administrator, executor, trustee, or any receiver, or any other fiduciary, or any officer or agent of a corporation, or any agent, consignee, clerk, bailee or servant, except persons under the age of 16 years, of any person, shall embezzle or fraudulently or knowingly and willfully misapply or convert to his own use, or shall take, make away with or secrete, with intent to embezzle or fraudulently or knowingly and willfully misapply or convert to his own use any money, goods or other chattels, bank note, check or order for the payment of money issued by or drawn on any bank or other corporation, or any treasury warrant, treasury note, bond or obligation for the payment of money issued by the United States or by any state, or any other valuable security whatsoever belonging to any other person or corporation, unincorporated association or organization which shall have come into his possession or under his care, he shall be punished as a Class H felon. (21 Hen. VII, c. 7; 1871-2, c. 145, s. 2; Code, s. 1014; 1889, c. 226; 1891, c. 188; 1897, c. 31; Rev., s. 3406; 1919, c. 97, s. 25; C.S., s. 4268; 1931, c. 158; 1939, c. 1; 1941, c. 31; 1967, c. 819; 1979, c. 760, s. 5.)

'14-91. Embezzlement of State property by public officers and employees.

If any officer, agent, or employee of the State, or other person having or holding in trust for the same any bonds issued by the State, or any security, or other property and effects of the same, shall embezzle or knowingly and willfully misapply or convert the same to his own use, or otherwise willfully or corruptly abuse such trust, such offender and all persons knowingly and willfully aiding and abetting or otherwise assisting therein shall be punished as a Class F felon. (1874-5, c. 52; Code, s. 1015; Rev., s. 3407; C.S., s. 4269; 1979, c. 716; c. 760, s. 5.)

'14-99. Embezzlement of taxes by officers.

If any officer appropriates to his own use the State, county, school, city or town taxes, he shall be guilty of embezzlement, and shall be punished as a Class I felon. (1883, c. 136, s. 49; Code, s. 3705; Rev., s. 3410; C.S., s. 4276; 1979, c. 760, s. 5.)

ARTICLE 19A.

Fraudulent Use of Credit Device.

§14-113.4. Avoiding or attempting to avoid payment for telecommunication services.

It shall be unlawful for any person to avoid or attempt to avoid, or to cause another to avoid, the lawful charges, in whole or in part, for any telephone or telegraph service or for the transmission of a message, signal or other communication by telephone or telegraph, or over telephone or telegraph facilities by the use of any fraudulent scheme, device, means or method. (1961, c. 223, s. 2; 1965, c. 1147.)

§14-113.6. Violation made misdemeanor.

Any person violating any of the provisions of this Article shall be guilty of a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500.00), imprisonment for not more than six months, or both. (1961, c. 223, s. 5; 1965, c. 1147; 1969, c. 1224, s. 6.)

ARTICLE 20.

Frauds.

14-118.4. Extortion.

Any person who threatens or communicates a threat or threats to another with the intention thereby wrongfully to obtain anything of value or any acquittance, advantage, or immunity is guilty of extortion and such person shall be punished as a Class H felon. (1973, c. 1032; 1979, c. 760, s. 5.)

ARTICLE 29.

Bribery.

§14-217. Bribery of officials.

(a) If any person holding office under the laws of this State who, except in payment of his legal salary, fees or perquisites, shall receive, or consent to receive, directly or indirectly, anything of value or personal advantage, or the promise thereof, for performing or omitting to perform any official act, which lay within the scope of his official authority and was connected with the discharge of his official and legal duties, or with the express or implied understanding that his official action, or omission to act, is to be in any degree influenced thereby, he shall be punished as a Class I felon.

(b) Indictments issued under these provisions shall specify:

- (1) The thing of value or personal advantage sought to be obtained; and
- (2) The specific act or omission sought to be obtained; and
- (3) That the act or omission sought to be obtained lay within the scope of the defendant's official authority and was connected with the discharge of his official and legal duties.

(c) A person commits the offense of conspiracy to commit bribery as defined in subsection (a) when:

- (1) He or she agrees with one or more persons to commit bribery as defined in subsection (a); and
- (2) He or she and at least one other person intend at the time of the agreement that it be carried out; and
- (3) He or she commits at least one overt act to carry out an object of the conspiracy.

A person cannot be convicted of conspiracy to commit bribery as defined in subsection (a) unless all elements of this section are present and are alleged in the bill of indictment including a specific statement setting forth the overt act committed. (1868-9, c. 176, s. 2; Code, s. 991; Rev., s. 3568; C.S., s. 4372; 1979, c. 760, s. 5; 1983 (Reg. Sess., 1984), c. 1050, s. 1.)

ARTICLE 31.

Misconduct in Public Office.

14-228. Buying and selling offices.

If any person shall bargain away or sell an office or deputation of an office, or any part or parcel thereof, or shall take money, reward or other profit, directly or indirectly, or shall take any promise, covenant, bond or assurance for money, reward or other profit, for an office or the deputation of an office, or any part thereof, which office, or any part thereof, shall touch or concern the administration or execution of justice, or the receipt, collection, control or disbursement of the public revenue, or shall concern or touch any clerkship in any court of record wherein justice is administered; or if any person shall give or pay money, reward or other profit, or shall make any promise, agreement, bond or assurance for any of such offices, or for the deputation of any of them, or for any part of them, the person so offending in any of the cases aforesaid shall be guilty of a misdemeanor, and on conviction thereof shall forfeit all his right, interest and estate in such office, and every part and parcel thereof, and shall be imprisoned and fined at the discretion of the court. (5, 6 Edw. VI, c. 16, ss. 1, 5; R.C., c. 34, s. 33; Code, s. 998; Rev., s. 3571; C.S., s. 4382.)

14-229. Acting as officer before qualifying as such.

If any officer shall enter on the duties of his office before he executes and delivers to the authority entitled to receive the same the bonds required by law, and qualifies by taking and subscribing and filing in the proper office the oath of office prescribed, he shall be guilty of a misdemeanor and shall be ejected from his office. (Code, s. 79; Rev., s. 3565; C.S., s. 4383.)

§14-230. Willfully failing to discharge duties.

If any clerk of any court of record, sheriff, magistrate, county commissioner, county surveyor, coroner, treasurer, or official of any of the State institutions, or of any county, city or town, shall willfully omit, neglect or refuse to discharge any of the duties of his office, for default whereof it is not elsewhere provided that he shall be indicted, he shall be guilty of a misdemeanor. If it shall be proved that such officer, after his qualification, willfully and corruptly omitted, neglected or refused to discharge any of the duties of his office, or willfully and corruptly violated his oath of office according to the true intent and meaning thereof, such officer shall be guilty of misbehavior in office, and shall be punished by removal therefrom under the sentence of the court as a part of the punishment for the offense, and shall also be fined or imprisoned in the discretion of the court. (1901, c. 270, s. 2; Rev., s. 3592; C.S., s. 4384; 1943, c. 347; 1973, c. 108, s. 5.)

§14-231. Failing to make reports and discharge other duties.

If any State or county officer shall fail, neglect or refuse to make, file or publish any report, statement or other paper, or to deliver to his successor all books and other property belonging to his office, or to pay over or deliver to the proper person all moneys which come into his hands by virtue or color of his office, or to discharge any duty devolving upon him by virtue of his office and required of him by law, he shall be guilty of a misdemeanor. (Rev., s. 3576; C.S., s. 4385.)

§ 14-234. Director of public trust contracting for his own benefit; participation in business transaction involving public funds; exemptions.

(a) If any person appointed or elected a commissioner or director to discharge any trust wherein the State or any county, city or town may be in any manner interested shall become an undertaker, or make any contract for his own benefit, under such authority, or be in any manner concerned or interested in making such contract, or in the profits thereof, either privately or openly, singly or jointly with another, he shall be guilty of a misdemeanor. Provided, that this section shall not apply to public officials transacting business with banks or banking institutions or savings and loan associations or public utilities regulated under the provisions of Chapter 62 of the General Statutes in regular course of business: Provided further, that such undertaking or contracting shall be authorized by said governing board by specific resolution on which such public official shall not vote.

(b) Nothing in this section nor in any general principle of common law shall render unlawful the acceptance of remuneration from a governmental board, agency or commission for services, facilities, or supplies furnished directly to needy individuals by a member of said board, agency or commission under any program of direct public assistance being rendered under the laws of this State or the United States to needy persons administered in whole or in part by such board, agency or commission; provided, however, that such programs of public assistance to needy persons are open to general participation on a nondiscriminatory basis to the practitioners of any given profession, professions or occupation; and provided further that the board, agency or commission, nor any of its employees or agents, shall have no control over who, among licensed or qualified providers, shall be selected by the beneficiaries of the assistance, and that the remuneration for such services, facilities or supplies shall be in the same amount as would be paid to any other provider; and provided further that, although the board, agency or commission member may participate in making determinations of eligibility of needy persons to receive the assistance, he shall take no part in approving his own bill or claim for remuneration.

(c) No director, board member, commissioner, or employee of any State department, agency, or institution shall directly or indirectly enter into or otherwise participate in any business transaction involving public funds with any firm, corporation, partnership, person or association which at any time during the preceding two-year period had a financial association with such director, board member, commissioner or employee.

(c1) The fact that a person owns ten percent (10%) or less of the stock of a corporation or has a ten percent (10%) or less ownership in any other business entity or is an employee of said corporation or other business entity does not make the person "in any manner interested" or "concerned or interested in making such contract, or in the profits thereof," as such phrase is used in subsection (a) of this section, and does not make the person one who "had a financial association," as defined in subsection (c) of this section; provided that in order for the exception provided by this subsection to apply, such undertaking or contracting must be authorized by the governing board by specific resolution on which such public official shall not vote.

(d) The provisions of subsection (c) shall not apply to any transactions meeting the requirements of Article 3, Chapter 143 of the General Statutes or any other transaction specifically authorized by the Advisory Budget Commission.

(d1) The first sentence of subsection (a) shall not apply to (i) any elected official or person appointed to fill an elective office of a village, town, or city having a population of no more than 7,500 according to the most recent

official federal census, (ii) any elected official or person appointed to fill an elective office of a county within which there is located no village, town, or city with a population of more than 7,500 according to the most recent official federal census, (iii) any elected official or person appointed to fill an elective office on a city board of education in a city having a population of no more than 7,500 according to the most recent official federal census, (iv) any elected official or person appointed to fill an elective office as a member of a county board of education in a county within which there is located no village, town or city with a population of more than 7,500 according to the most recent official federal census, and (v) any physician, pharmacist, dentist, optometrist, veterinarian, or nurse appointed to a county social services board, local health board, or area mental health board serving one or more counties within which there is located no village, town, or city with a population of more than 7,500 according to the most recent official federal census if:

(1) The undertaking or contract or series of undertakings or contracts between the village, town, city, county, county social services board, county or city board of education, local health board or area mental health, mental retardation, and substance abuse board and one of its officials is approved by specific resolution of the governing body adopted in an open and public meeting, and recorded in its minutes and the amount does not exceed ten thousand dollars (\$10,000) for medically related services and fifteen thousand dollars (\$15,000) for other goods or services within a 12-month period; and

(2) The official entering into the contract or undertaking with the unit or agency does not in his official capacity participate in any way or vote; and

(3) The total annual amount of undertakings or contracts with each official, shall be specifically noted in the audited annual financial statement of the village, town, city, or county; and

(4) The governing board of any village, town, city, county, county social services board, county or city board of education, local health board, or area mental health, mental retardation, and substance abuse board which undertakes or contracts with any of the officials of their governmental unit shall post in a conspicuous place in its village, town, or city hall, or courthouse, as the case may be, a list of all such officials with whom such undertakings or contracts have been made, briefly describing the subject matter of the undertakings or contracts and showing their total amounts; this list shall cover the preceding 12 months and shall be brought up-to-date at least quarterly.

(d2) The provision of subsection (d1) shall not apply to contracts required by Article 8 of Chapter 143 of the General Statutes, Public Building Contracts.

(e) Anyone violating this section shall be guilty of a misdemeanor. (1825, c. 1269, P.R.; 1826, c. 29; R.C., c. 34, s. 38; Code, s. 1011; Rev., s. 3572; C.S., s. 4388; 1929, c. 19, s. 1; 1969, c. 1027; 1975, c. 409; 1977, cc. 240, 761; 1979, c. 720; 1981, c. 103, ss. 1, 2, 5; 1983, c. 544, ss. 1, 2; 1985, c. 190; 1987, c. 570, s. 1.)

§ 14-234.1. Misuse of confidential information.--(a) It is unlawful for any officer or employee of the State or an officer or an employee of any of its political subdivisions, in contemplation of official action by himself or by a governmental unit with which he is associated, or in reliance on information which was made known to him in his official capacity and which has not been made public, to commit any of the following acts:

(1) acquire a pecuniary interest in any property, transaction, or enterprise or gain any pecuniary benefit which may be affected by such information or official action; or
(2) intentionally aid another to do any of the above acts.
(b) Violation of this section is a misdemeanor." (1987, c. 616, s. 1.)

'14-235. Speculating in claims against towns, cities and the State.

If any clerk, sheriff, register of deeds, county treasurer or other county, city, town or State officer shall engage in the purchasing of any county, city, tow'n or State claim, including teacher's salary voucher, at a less price than its full and true value or at any rate of discount thereon, or be interested in any speculation on any such claim, he shall be guilty of a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500.00), imprisonment for not more than six months, or both. (1868-9, c. 260; Code, s. 1009; Rev., s. 3575; C.S., s. 4389; 1923, c. 136, s. 208; 1969, c. 1224, s. 6.)

§14-236. Acting as agent for those furnishing supplies for schools and other State institutions.

If any member of any board of directors, board of managers, board of trustees of any of the educational, charitable, eleemosynary or penal institutions of the State, or any member of any board of education, or any county or district superintendent or examiner of teachers, or any trustee of any school or other institution supported in whole or in part from any of the public funds of the State, or any officer, agent, manager, teacher or employee of such boards, shall have any pecuniary interest, either directly or indirectly, proximately or remotely in supplying any goods, wares or merchandise of any nature or kind whatsoever for any of said institutions or schools; or if any of such officers, agents, managers, teachers or employees of such institution or school or State or county officer shall act as agent for any manufacturer, merchant, dealer, publisher or author for any article of merchandise to be used by any of said institutions or schools; or shall receive, directly or indirectly, any gift, emolument, reward or promise of reward for his influence in recommending or procuring the use of any manufactured article, goods, wares or merchandise of any nature or kind whatsoever by any of such institutions or schools, he shall be forthwith removed from his position in the public service, and shall upon conviction be deemed guilty of a misdemeanor and fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) and be imprisoned, in the discretion of the court.

This section shall not apply to members of any board of education which is subject to and complies with the provisions of G.S. 14-234(d1). (1897, c. 543; 1899, c. 732, s. 73; Rev., s. 3833; C.S., s. 4390; 1981, c. 103, s. 3.)

'14-241. Disposing of public documents or refusing to deliver them over to successor.

It shall be the duty of the clerk of the superior court of each county, and every other person to whom the acts of the General Assembly, appellate division reports or other public documents are transmitted or deposited for the use of the county or the State, to keep the same safely in their respective offices; and if any such person having the custody of such books and documents, for the uses aforesaid, shall negligently and willfully dispose of the same, by sale or otherwise, or refuse to deliver over the same to his successor in office, he shall be guilty of a misdemeanor, and shall be punished by a fine or imprisonment, or both, at the discretion of the court. (1881, c. 151; Code, s. 1073; Rev., s. 3598; C.S., s. 4395; 1969, c. 44, s. 26.)

§14-242. Failing to return process or making false return.

If any sheriff, constable or other officer, whether State or municipal, or any person who shall presume to act as any such officer, not being by law authorized so to do, refuse or neglect to return any precept, notice or process, to him tendered or delivered, which it is his duty to execute, or make a false return thereon, he shall forfeit and pay to anyone who will sue for the same one hundred dollars (\$100.00), and shall moreover be guilty of a misdemeanor. (1818, c. 980, s. 3, P.R.; 1827, c. 20, s. 4; R.C., c. 34, s. 118; Code, s. 1112; Rev., s. 3604; C.S., s. 4396.)

'14-247. Private use of publicly owned vehicle.

It shall be unlawful for any officer, agent or employee of the State of North Carolina, or of any county or of any institution or agency of the State, to use for any private purpose whatsoever any motor vehicle of any type or description whatsoever belonging to the State, or to any county, or to any institution or agency of the State. It is not a private purpose to drive a permanently assigned state-owned motor vehicle between one's official work station and one's home as provided in G.S. 143-341(8)i7a.

It shall be unlawful for any person to violate a rule or regulation adopted by the Department of Administration and approved by the Governor concerning the control of all state-owned passenger motor vehicles as provided in G.S. 143-341(8)i with the intent to defraud the State of North Carolina. (1925, c. 239, s. 1; 1981, c. 859, ss. 52, 53; 1983, c. 717, s. 75.)

§14-248. Obtaining repairs and supplies for private vehicle at expense of State.

It shall be unlawful for any officer, agent or employee to have any privately owned motor vehicle repaired at any garage belonging to the State or to any county, or any institution or agency of the State, or to use any tires, oils, gasoline or other accessories purchased by the State, or any county, or any institution or agency of the State, in or on any such private car. (1925, c. 239, s. 2.)

§14-251. Violation made misdemeanor.

Any person, firm or corporation violating any of the provisions of G.S. 14-247 to 14-250 shall be guilty of a misdemeanor punishable by a fine of not less than one hundred dollars (\$100.00) and not more than five hundred dollars (\$500.00), imprisonment for not more than six months, or both such fine and imprisonment. Nothing in G.S. 14-247 through 14-251 shall apply to the purchase, use or upkeep or expense account of the car for the executive mansion and the Governor. (1925, c. 239, s. 5; 1969, c. 1224, s. 16.)

ARTICLE 45.

Regulation of Employer and Employee.

'14-353. Influencing agents and servants in violating duties owed employers.

Any person who gives, offers or promises to an agent, employee or servant any gift or gratuity whatever with intent to influence his action in relation to his principal's, employer's or master's business; any agent, employee or servant who requests or accepts a gift or gratuity or a promise to make a gift or to do an act beneficial to himself, under an agreement or with an understanding that he shall act in any particular manner in relation to his principal's, employer's or master's business; any agent, employee or servant

who, being authorized to procure materials, supplies or other articles either by purchase or contract for his principal, employer or master, or to employ service or labor for his principal, employer or master, receives, directly or indirectly, for himself or for another, a commission, discount or bonus from the person who makes such sale or contract, or furnishes such materials, supplies or other articles, or from a person who renders such service or labor; and any person who gives or offers such an agent, employee or servant such commission, discount or bonus, shall be guilty of a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500.00), imprisonment for not more than six months, or both. (1913, c. 190, s. 1; C.S., s. 4475; 1969, c. 1224, s. 6.)

CHAPTER 95.

DEPARTMENT OF LABOR AND LABOR REGULATIONS.

ARTICLE 12.

Public Employees Prohibited from Becoming Members of Trade Unions or Labor Unions.

'95-98.1. Strikes by public employees prohibited.

Strikes by public employees are hereby declared illegal and against the public policy of this State. No person holding a position either full- or part-time by appointment or employment with the State of North Carolina or in any county, city, town or other political subdivision of the State of North Carolina, or in any agency of any of them, shall willfully participate in a strike by public employees. (1981, c. 958, s. 1.)

§95-98.2. Strike defined.

The word "strike" as used herein shall mean a cessation or deliberate slowing down of work by a combination of persons as a means of enforcing compliance with a demand upon the employer, but shall not include protected activity under Article 16 of this Chapter: Provided, however, that nothing herein shall limit or impair the right of any public employee to express or communicate a complaint or opinion on any matter related to the conditions of public employment so long as the same is not designed to and does not interfere with the full, faithful, and proper performance of the duties of employment. (1981, c. 958, s. 1.)

§95-99. Penalty for violation of Article.

Any violation of the provisions of this Article is hereby declared to be a misdemeanor, and upon conviction, plea of guilty or plea of nolo contendere shall be punishable in the discretion of the court. (1959, c. 742.)

CHAPTER 126.

STATE PERSONNEL SYSTEM.

ARTICLE 5.

Political Activity of Employees.

§126-13. Appropriate political activity of State employees defined.

(a) As an individual, each State employee retains all the rights and obligations of citizenship provided in the Constitution and laws of the State of North Carolina and the Constitution and laws of the United States of America; however, no State employee subject to the Personnel Act or temporary State employee shall:

- (1) Take any active part in managing a campaign, or campaign for political office or otherwise engage in political activity while on duty or within any period of time during which he is expected to perform services for which he receives compensation from the State;
- (2) Otherwise use the authority of his position, or utilize State funds, supplies or vehicles to secure support for or oppose any candidate, party, or issue in an election involving candidates for office or party nominations, or affect the results thereof.

(b) No head of any State department, agency, or institution or other State employee exercising supervisory authority shall make, issue, or enforce any rule or policy the effect of which is to interfere with the right of any State employee as an individual to engage in political activity while not on duty or at times during which he is not performing services for which he receives compensation from the State. A State employee who is or may be expected to perform his duties on a twenty-four hour per day basis shall not be prevented from engaging in political activity except during regularly scheduled working hours or at other times when he is actually performing the duties of his office. The willful violation of this subdivision shall be a misdemeanor. (1967, c. 821, s. 1; 1985, c. 469, s. 1; c. 617, s. 5.)

§126-14. Promise or threat to obtain political contribution or support.

(a) It is unlawful for a State employee or a person appointed to State office, other than elective office or office on a board, commission, committee, or council whose function is advisory only, whether or not subject to the Personnel Act, to coerce a State employee subject to the Personnel Act, probationary State employee, or temporary State employee to support or contribute to a political candidate or party by threatening him with employment termination or discipline or by promising preferential personnel treatment.

(b) Any person violating this section shall be guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment for not more than six months, or both.

(c) A State employee subject to the Personnel Act, probationary State employee, or temporary State employee who without probable cause falsely accuses a State employee or a person appointed to State office of violating this section shall be subject to discipline or termination in accordance with the provisions of G.S. 126-35, 126-37, and 126-38 and may, as otherwise provided by law, be subject to criminal penalties for perjury or civil liability for libel, slander, or malicious prosecution. (1967, c. 821, s. 1; 1985, c. 469, s. 2.)

§126-14.1. Threat to obtain political contribution or support.

(a) It is unlawful for any person to coerce a State employee subject to the Personnel Act, probationary State employee, or temporary State employee to support or contribute to a political candidate or party by explicitly threatening him with employment termination or discipline.

(b) Any person violating this section shall be guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment for not more than six months, or both.

(c) A State employee subject to the Personnel Act, probationary State employee, or temporary State employee, who without probable cause falsely accuses a person of violating this section shall be subject to discipline or termination in accordance with the provisions of G.S. 126-35, 126-37, and 126-38 and may, as otherwise provided by law, be subject to criminal penalties for perjury or civil liability for libel, slander, or malicious prosecution. (1985, c. 469, s. 3)

§126-15. Disciplinary action for violation of Article.

Failure to comply with this Article is grounds for disciplinary action which, in case of deliberate or repeated violation, may include dismissal or removal from office. (1967, c. 821, s. 1.)

CHAPTER 128.
OFFICES AND PUBLIC OFFICERS.

ARTICLE 1.

General Provisions.

128-3. Bargains for office void.

All bargains, bonds and assurances made or given for the purchase or sale of any office whatsoever, the sale of which is contrary to law, shall be void. (5 and 6 Edw. VI, c. 16, s. 3; R.C., c. 77, s. 2; Code, s. 1871; Rev., s. 2366; C.S., s. 3202.)

§128-4. Receiving compensation of subordinates for appointment or retention; removal.

Any official or employee of this State or any political subdivision thereof, in whose office or under whose supervision are employed one or more subordinate officials or employees who shall, directly or indirectly, receive or demand, for himself or another, any part of the compensation of any such subordinate, as the price of appointment or retention of such subordinate, shall be guilty of a misdemeanor: Provided, that this section shall not apply in cases in which an official or employee is given an allowance for the conduct of his office from which he is to compensate himself and his subordinates in such manner as he sees fit. Any person convicted of violating this section, in addition to the criminal penalties, shall be subject to removal from office. The procedure for removal shall be the same as that provided for removal of certain local officials from office by G.S. 128-16 to 128-20, inclusive. (1937, c. 32, ss. 1, 2.)

CHAPTER 133.
PUBLIC WORKS.

ARTICLE 3.

Regulation of Contractors for Public Works.

§133-23. Definition.

(a) The term "governmental agency" shall include the State of North Carolina, its agencies, institutions, and political subdivisions, all municipal corporations and all other public units, agencies and authorities which are authorized to enter into public contracts for construction or repair or for procurement of goods or services.

(b) The term "person" shall mean any individual, partnership, corporation, association, or other entity formed for the purpose of doing business as a contractor, subcontractor, or supplier.

(c) The term "subsidiary" is used as defined in G.S. 55-2(9). (1981, c. 764. s. 1.)

§133-32. Gifts and favors regulated.

(a) It shall be unlawful for any contractor, subcontractor, or supplier who:

- (1) Has a contract with a governmental agency; or
- (2) Has performed under such a contract within the past year; or
- (3) Anticipates bidding on such a contract in the future to make gifts or to give favors to any officer or employee of a governmental agency who is charged with the duty of:
 - (1) Preparing plans, specifications, or estimates for public contract; or
 - (2) Awarding or administering public contracts; or

(3) Inspecting or supervising construction.

It shall also be unlawful for any officer or employee of a governmental agency who is charged with the duty of:

- (1) Preparing plans, specifications, or estimates for public contracts; or
- (2) Awarding or administering public contracts; or
- (3) Inspecting or supervising construction willfully to receive or accept any such gift or favor.

(b) A violation of subsection (a) shall be a misdemeanor.

(c) Gifts or favors made unlawful by this section shall not be allowed as a deduction for North Carolina tax purposes by any contractor, subcontractor or supplier or officers or employees thereof.

(d) This section is not intended to prevent the gift and receipt of honorariums for participating in meetings, advertising items or souvenirs of nominal value, or meals furnished at banquets. This section is not intended to prevent any contractor, subcontractor, or supplier from making donations to professional organizations to defray meeting expenses where governmental employees are members of such professional organizations, nor is it intended to prevent governmental employees who are members of professional organizations from participation in all scheduled meeting functions available to all members of the professional organization attending the meeting. This section is also not intended to prohibit customary gifts or favors between employees or officers and their friends and relatives or the friends and relatives of their spouses, minor children, or members of their household where it is clear that it is that relationship rather than the business of the individual concerned which is the motivating factor for the gift or favor. However, all

such gifts knowingly made or received are required to be reported by the donee to the agency head if the gifts are made by a contractor, subcontractor, or supplier doing business directly or indirectly with the governmental agency employing the recipient of such a gift. (1981, c. 764, s. 1.; 1987, c. 399, s. 1.)

CHAPTER 136.

ROADS AND HIGHWAYS.

ARTICLE 1.

Organization of Department of Transportation.

'136-13. Malfeasance of officers and employees of Department of Transportation, members of Board of Transportation, contractors, and others.

(a) It is unlawful for any person, firm, or corporation to directly or indirectly corruptly give, offer, or promise anything of value to any officer or employee of the Department of Transportation or member of the Board of Transportation, or to promise any officer or employee of the Department of Transportation or any member of the Board of Transportation to give anything of value to any other person with intent:

- (1) To influence any official act of any officer or employee of the Department of Transportation or member of the Board of Transportation;
- (2) To influence such member of the Board of Transportation, or any officer or employee of the Department of Transportation to commit or aid in committing, or collude in, or allow, any fraud, or to make opportunity for the commission of any fraud on the State of North Carolina; and
- (3) To induce a member of the Board of Transportation, or any officer or employee of the Department of Transportation to do or omit to do any act in violation of his lawful duty.

(b) It shall be unlawful for any member of the Board of Transportation, or any officer or employee of the Department of Transportation, directly or indirectly, to corruptly ask, demand, exact, solicit, accept, receive, or agree to receive anything of value for himself or any other person or entity in return for:

- (1) Being influenced in his performance of any official act;
- (2) Being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or to make opportunity for the commission of any fraud on the State of North Carolina; and
- (3) Being induced to do or omit to do any act in violation of his official duty.

(c) The violation of any of the provisions of this section shall be cause for forfeiture of public office and shall be a felony punishable by a fine of not more than twenty thousand dollars (\$20,000) or three times the monetary equivalent of the thing of value whichever is greater, or imprisonment of not more than 10 years, or both such fine and imprisonment. (1921, c. 2, s. 49; C.S., s. 3846(cc); 1933, c. 172, s. 17; 1957, c. 65, s. 11; 1965, c. 55, s. 7; 1973, c. 507, s. 6; 1975, c. 716, s. 7; 1977, c. 464, ss. 7.1, 10, 10.1; 1979, c. 298, ss. 3, 4.)

§136-13.1. Use of position to influence elections or political action.

No member of the Board of Transportation nor any officer or employee of the Department of Transportation shall be permitted to use his position to influence elections or the political action of any person. (1965, c. 55, s. 8; 1973, c. 507, s. 7; 1975, c. 716, s. 7; 1977, c. 464, ss. 7.1, 10.1; 1979, c. 298, s. 3.)

§136-13.2. Falsifying highway inspection reports.

(a) Any employee or agent employed by the Department of Transportation or by an engineering or consulting firm engaged by the Department of Transportation, who knowingly falsifies any inspection report or test report required by the Department of Transportation in connection with the construction of highways, shall be guilty of a Class H felony.

(b) Any employee, supervisor, or officer of the Department of Transportation who directs a subordinate under his direct or indirect supervision to falsify an inspection report or test report required by the Department of Transportation in connection with the construction of highways, shall be guilty of a Class H felony.

(c) Repealed by Session Laws 1979, c. 786, s. 2, effective May 8, 1979. (1979, c. 523; c. 786, s. 2; 1981, c. 793, s. 1.)

§136-14. Members not eligible for other employment with Department; no sales to Department by employees; members not to sell or trade property with Department; profiting from official position.

No member of the Board of Transportation shall be eligible to any other employment in connection with the Department of Transportation, and no member of the Board of Transportation or any salaried employee of the Department of Transportation shall furnish or sell any supplies or materials, directly or indirectly, to the Department of Transportation, nor shall any member of the Board of Transportation, directly or indirectly, engage in any transaction involving the sale of or trading of real or personal property with the Department of Transportation, or profit in any manner by reason of his official action or his official position, except to receive such salary, fees and allowances as by law provided. Violation of this section shall be a felony punishable by fine of not more than twenty thousand dollars (\$20,000), or three times the value of the transaction, or by both fine and imprisonment. (1933, c. 172, s. 10; 1957, c. 65, s. 11; 1965, c. 55, s. 9; 1973, c. 507, s. 8; 1975, c. 716, s. 7; 1977, c. 464, ss. 7.1, 10.2; 1979, ch. 298, s. 3; 1985, c. 689, s. 28.)

CHAPTER 143.

STATE DEPARTMENTS, INSTITUTIONS, AND COMMISSIONS.

ARTICLE 3.

Purchases and Contracts.

'143-58.1. Unauthorized use of public purchase or contract procedures for private benefit.

(a) It shall be unlawful for any person, by the use of the powers, policies or procedures described in this Article or established hereunder, to purchase, attempt to purchase, procure or attempt to procure any property or services for private use or benefit.

(b) This prohibition shall not apply if:

- (1) The department, institution or agency through which the property or services are procured had theretofore established policies and procedures permitting such purchases or procurement by a class or classes of persons in order to provide for the mutual benefit of such persons and the department, institution or agency involved, or the public benefit or convenience; and
- (2) Such policies and procedures, including any reimbursement policies, are complied with by the person permitted thereunder to use the purchasing or procurement procedures described in this Article or established thereunder.

(c) A violation of this section is a misdemeanor punishable by fine, imprisonment up to two years, or both, in the discretion of the court. (1983, c. 409.)

§143-63. Financial interest of officers in sources of supply; acceptance of bribes.

Neither the Secretary of Administration, nor any assistant of his, nor any member of the Advisory Budget Commission shall be financially interested, or have any personal beneficial interest, either directly or indirectly, in the purchase of, or contract for, any materials, equipment or supplies, nor in any firm, corporation, partnership or association furnishing any such supplies, materials or equipment to the State government, or any of its departments, institutions or agencies, nor shall such Secretary, assistant, or member of the Commission accept or receive, directly or indirectly, from any person, firm or corporation to whom any contract may be awarded, by rebate, gifts or otherwise, any money or anything of value whatsoever, or any promise, obligation or contract for future reward or compensation. Any violation of this section shall be deemed a felony and shall be punishable by fine or imprisonment, or both. Upon conviction thereof, any such Secretary, assistant or member of the Commission shall be removed from office. (1931, c. 261, s. 15; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 1983, c. 717, s. 81.)

ARTICLE 6.

Officers of State Institutions.

§143-113. Trading by interested officials forbidden.

The directors, stewards, and superintendents of the State institutions shall not trade directly or indirectly with or among themselves, or with any concern in which they are interested, for any supplies needed by any such institutions. (1907, c. 883, s. 2; C.S., s. 7521.)

§143-114. Diversion of appropriations to State institutions.

It shall be unlawful for the board of trustees, board of directors, or other body controlling any State institution, to divert, use, or expend any moneys appropriated for the use of said institutions for its permanent improvement and enlargement to the payment of any of the current expenses of said institution or for the payment of the cost of the maintenance thereof; it shall likewise be unlawful for any board of trustees, board of directors, or other controlling body of any State institution to which money is appropriated for its maintenance by the State to divert, use or expend any money so appropriated for maintenance, for the permanent enlargement or permanent equipment, or the purchase of land for said institution. (1921, c. 232, s. 1; C.S., s. 7521 (a).)

§143-115. Trustee, director, officer or employee violating law guilty of misdemeanor.

Any member or members of any board of trustees, board of directors, or other controlling body governing any of the institutions of the State, or any officer, employee of, or person holding any position with any of the institutions of the State, violating any of the provisions of G.S. 143-114, shall be guilty of a misdemeanor, and upon conviction in any court of competent jurisdiction judgment shall be rendered by such court removing such member, officer, employee, or person holding any position from his place, office or position, and shall be fined or imprisoned in the discretion of the court. (1921, c. 232, s. 2; C.S., s. 7521 (b).)

CHAPTER 147.
STATE OFFICERS.
ARTICLE 2.

Expenses of State Officers and State Departments.

'147-9. Unlawful to pay more than allowance.

It shall be unlawful for any officer, auditor, bookkeeper, clerk or other employee of the State of North Carolina or any subdivision thereof to knowingly approve any claim or charge on the part of any person for mileage by reason of the use of any motor vehicle owned by the State or any subdivision thereof or by any person and used in the pursuit of his employment or office in excess of seven cents (7¢) per mile as set out in G.S. 147-8 and any officer, auditor, bookkeeper, clerk or other employee violating the provisions of this section shall be guilty of a misdemeanor. (1931, c. 382, s. 2; 1953, c. 675, s. 21.)

CHAPTER 163.

ELECTIONS.

ARTICLE 22.

Corrupt Practices and Other Offenses against the Elective Franchise.

163-271. Intimidation of voters by officers made misdemeanor.

It shall be unlawful for any person holding any office, position, or employment in the State government, or under and with any department, institution, bureau, board, commission, or other State agency, or under and with any county, city, town, district, or other political subdivision, directly or indirectly, to discharge, threaten to discharge, or cause to be discharged, or otherwise intimidate or oppress any other person in such employment on account of any vote such voter or any member of his family may cast, or consider or intend to cast, or not to cast, or which he may have failed to cast, or to seek or undertake to control any vote which any subordinate of such person may cast, or consider or intend to cast, or not to cast, by threat, intimidation, or declaration that the position, salary, or any part of the salary of such subordinate depends in any manner whatsoever, directly or indirectly, upon the way in which subordinate or any member of his family casts, or considers or intends to cast, or not to cast his vote, at any primary or election. A violation of this section is a misdemeanor. (1933, c. 165, s. 25; 1967, c. 775, s. 1; 1987, c. 565, s. 11.)

§163-276. Convicted officials; removal from office.

Any public official who shall be convicted of violating any provision of Article 13 or 22 of this Chapter, in addition to the punishment provided by law, shall be removed from office by the judge presiding, and, if the conviction is for a felony, shall be disqualified from voting until his citizenship is restored as provided by law. (1949, c. 504; 1967, c. 775, s. 1; 1985, c. 563, s. 11.3.)

HATCH ACT (on Political Activity), Some provisions

UNITED STATES CODE

TITLE 18 -- CRIMES AND CRIMINAL PROCEDURE

PART I. -- CRIMES

CHAPTER 29. ELECTIONS AND POLITICAL ACTIVITIES

§ 595. Interference by administrative employees of Federal, State, or Territorial Governments

Whoever, being a person employed in any administrative position ... by any State ... of the United States, or any political subdivision, municipality, or agency thereof, or agency of such political subdivision or municipality (including any corporation owned or controlled by any State ... of the United States or by any such political subdivision, municipality, or agency), in connection with any activity which is financed in whole or in part by loans or grants made by the United States, or any department or agency thereof, uses his official authority for the purpose of interfering with, or affecting, the nomination or the election of any candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

This section shall not prohibit or make unlawful any act by any officer or employee of any educational or research institution, establishment, agency, or system which is supported in whole or in part by any state or political subdivision thereof, or by the District of Columbia or by any Territory or Possession of the United States; or by any recognized religious, philanthropic or cultural organization.

§ 598. Coercion by means of relief appropriations

Whoever uses any part of any appropriation made by Congress for work relief, relief, or for increasing employment by providing loans and grants for public-works projects, or exercises or administers any authority conferred by any Appropriation Act for the purpose of interfering with, restraining, or coercing any individual in the exercise of his right to vote at any election, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

§ 599. Promise of appointment by candidate

Whoever, being a candidate, directly or indirectly promises or pledges the appointment, or the use of his influence or support for the appointment of any person to any public or private position or employment, for the purpose of procuring support in his candidacy shall be fined not more than \$1,000 or imprisoned not more than one year, or both; and if the violation was willful, shall be fined not more than \$10,000 or imprisoned not more than two years, or both.

§ 600. Promise of employment or other benefit for political activity

Whoever, directly or indirectly, promises any employment, position, compensation, contract, appointment, or other benefit, provided for or made possible in whole or in part by any Act of Congress, or any special consideration in obtaining any such benefit, to any person as consideration, favor, or reward for any political activity or for the support of or opposition to any candidate or any political party in connection with any general or special election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, shall be fined not more than \$10,000 or imprisoned not more than one year, or both.

§ 601. Deprivation of employment or other benefit for political contribution

(a) Whoever, directly or indirectly, knowingly causes or attempts to cause any person to make a contribution of a thing of value (including services) for the benefit of any candidate or any political party, by means of the denial or deprivation, or the threat of the denial or deprivation, of--

- (1) any employment, position, or work in or for any agency or other entity of the Government of the United States, a State, or a political subdivision of a State, or any compensation or benefit of such employment, position, or work; or
- (2) any payment or benefit of a program of the United States, a State, or a political subdivision of a State;

if such employment, position, work, compensation, payment, or benefit is provided for or made possible in whole or in part by an Act of Congress, shall be fined not more than \$10,000, or imprisoned not more than one year, or both.

(b) As used in this section--

(1) the term "candidate" means an individual who seeks nomination for election, or election, to Federal, State, or local office, whether or not such individual is elected, and, for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election, to Federal, State, or local office, if he has (A) taken the action necessary under the law of a State to qualify himself for nomination for election, or election, or (B) received contributions or made expenditures, or has given his consent for any other person to receive contributions or make expenditures, with a view to bringing about his nomination for election, or election, to such office;

(2) the term "election" means (A) a general, special primary, or runoff election, (B) a convention or caucus of a political party held to nominate a candidate, (C) a primary election held for the selection of delegates to a nominating convention of a political party, (D) a primary election held for the expression of a preference for the nomination of persons for election to the office of President, and (E) the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States or of any State; and

(3) the term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

§ 604. Solicitation from persons on relief

Whoever solicits or receives or is in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political purpose from any person known by him to be entitled to, or receiving compensation, employment, or other benefit provided for or made possible by any Act of Congress appropriating funds for work relief or relief purposes, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

§ 605. Disclosure of names of persons on relief

Whoever, for political purposes, furnishes or discloses any list or names of persons receiving compensation, employment or benefits provided for or made possible by any Act of Congress appropriating, or authorizing the appropriation of funds for work relief or relief purposes, to a political candidate, committee, campaign manager, or to any person for delivery to a political candidate, committee, or campaign manager; and

Whoever receives any such list or names for political purposes--

Shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

THE HOBBS ACT
UNITED STATES CODE
TITLE 18-- CRIMES
CHAPTER 95. RACKETEERING

§1951. Interference with commerce by threats or violence

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than \$10,000 or imprisoned not more than twenty years, or both.

(b) As used in this section--

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

(3) The term "commerce" means . . . all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

United States v. Paschall, 772 F. 2d. 68 (2d Cir. 1985), cert. denied, 475 U.S. 1119, 106 S. Ct. 1635, 90 L.Ed. 182 (1986).

"It has been held that inducement by a public official, in the sense that he overtly solicited the payment, is not an essential element of the offense [18 U.S.C. §1951 (the Hobbs Act)]. [citations omitted.] Nor is it necessary . . . that the public official misused his office in the sense that he granted some benefit or advantage to his benefactor to which the benefactor was not entitled. [citations omitted] It is enough that the benefactor transfers something of significant value to the public official with the expectation that the public official will extend to him some benefit or refrain from some harmful action, and the public official accepts the thing of significant value knowing that it is being transferred to him because of his office." 772 F.2d. at 71,72.

"When the public regulator 'passively' receives and retains gifts of substantial value from the regulated, he has subverted his office and one may readily infer that the inducement of the gift was the public official's office and not a benevolent friendship." Id. at 73

**PORTIONS OF THE RULES OF
PROFESSIONAL CONDUCT OF THE
NORTH CAROLINA STATE BAR
DEALING WITH ATTORNEY-PUBLIC
OFFICE HOLDERS**

RULES OF PROFESSIONAL CONDUCT OF THE NORTH CAROLINA STATE BAR

CANON I

*A Lawyer Should Assist in Maintaining the Integrity
and Competence of the Legal Profession.*

...

Rule 1.2 Misconduct.

It is professional misconduct for a lawyer to:

- (A) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (B) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (C) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (D) Engage in conduct that is prejudicial to the administration of justice;
- (E) State or imply an ability to influence improperly a government agency or official; or
- (F) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

COMMENT

Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offense carry no such implication. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, or breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation and professional unfitness.

Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of attorney. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

CANON II

*A Lawyer Should Assist the Legal Profession in
Fulfilling Its Duty to Make Legal Counsel Available.*

...

Rule 2.3 Firm Names and Letterheads.

...

- (D) The name of a lawyer holding a public office shall not be used in the name of the law firm, or in communications on its behalf, during any

substantial period in which the lawyer is not actively and regularly practicing with the firm, whether or not the lawyer is precluded from practicing by law.

CANON VII

*A Lawyer Should Represent His Client Zealously
Within the Bounds of the Law.*

...

Rule 7.10 Contact with Officials.

(A) A lawyer shall not give or lend anything of substantial value to a judge, official, or employee of a tribunal.

(B) In an adversary proceeding, a lawyer shall not communicate, or cause another to communicate, as to the merits of the cause with a judge or an official before whom the proceeding is pending except:

- (1) In the course of official proceedings in the cause.
- (2) In writing, if he promptly delivers a copy of the writing to opposing counsel or to the adverse party if he is not represented by a lawyer.
- (3) Orally, upon adequate notice to opposing counsel or to the adverse party if he is not represented by a lawyer.
- (4) As otherwise authorized by law.

COMMENT

The impartiality of a public servant in our legal system may be impaired by the receipt of gifts or loans. A lawyer, therefore, is never justified in making a gift or a loan to a judge, a hearing officer, or an official or employee of a tribunal.

All litigants and lawyers should have access to tribunals on an equal basis. Generally, in adversary proceedings a lawyer should not communicate with a judge relative to a matter pending before, or which is to be brought before, a tribunal over which he presides in circumstances which might have the effect or give the appearance of granting undue advantage to one party. For example, a lawyer should not communicate with a tribunal by a writing unless a copy thereof is promptly delivered to opposing counsel or to the adverse party if he is not represented by a lawyer. Ordinarily an oral communication by a lawyer with a judge or hearing officer should be made only upon adequate notice to opposing counsel, or, if there is none, to the opposing party. A lawyer should not condone or lend himself to private opportunities by another with a judge or hearing officer on behalf of himself or his client.

CANON VIII

A Lawyer Should Assist in Improving the Legal System.

...

Rule 8.1 Action as a Public Official.

A lawyer who holds public office shall not:

- (A) Use his public position to obtain, or attempt to obtain, a special advantage in legislative matters for himself, or for a client under circumstances where he knows or it is obvious that such action is not in the public interest.
- (B) Use his public position to influence, or attempt to influence, a tribunal to act in favor of himself or his client.

(C) Accept anything of value from any person when the lawyer knows or it is obvious that the offer is for the purpose of influencing his action as a public official.

COMMENT

Lawyers often serve as legislators or as holders of other public offices. This is highly desirable, as lawyers are uniquely qualified to make significant contributions to the improvement of the legal system. A lawyer who is a public officer, whether full or part-time, should not engage in activities in which his personal or professional interests are or foreseeably may be in conflict with his official duties.

Rule 8.2 Statements Concerning Judges and Other Adjudicatory Officers.

- (A) A lawyer shall not knowingly make false statements of fact concerning the qualifications of a candidate for election or appointment to a judicial office.
- (B) A lawyer shall not knowingly make false accusations against a judge or other adjudicatory officer.
- (C) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

COMMENT

Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal offices, such as attorney general, prosecuting attorney, and public defender. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.

When a lawyer seeks judicial office, the lawyer should be bound by applicable limitations on political activity.

To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.

CANON IX

A Lawyer Should Avoid Even the Appearance of Professional Impropriety.

...

Rule 9.1 Successive Government and Private Employment.

- (A) Except as law may otherwise expressly permit, a lawyer shall not represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency consents after full disclosure. No lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter without the consent of the public agency involved.
- (B) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee may not represent a private client whose interests are adverse to that person on a matter in which the information could be used to the material disadvantage of that person. A firm with which that lawyer is associated may undertake

or continue representation in the matter only with the consent of the person about whom the information was obtained.

(C) Except as law may otherwise expressly permit, a lawyer serving as a public officer or employee shall not:

(1) Participate in a matter in which the lawyer participated personally and substantially while in private practice or non-governmental employment, unless under applicable law no one is, or by lawful delegation may be, authorized to act in the lawyer's stead in the matter; or

(2) Negotiate for private employment with any person who is involved as a party or as attorney for a party in a matter in which the lawyer is participating personally and substantially.

(D) As used in this Rule, the term "matter" includes:

(1) Any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties; and

(2) Any other matter covered by the conflict of interest rules of the appropriate government agency.

(E) As used in this Rule, the term "confidential government information" means information which has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose, and which is not otherwise available to the public.

COMMENT

This Rule prevents a lawyer from exploiting public office for the advantage of a private client.

A lawyer representing a government agency, whether employed or specially retained by the government, is subject to the Rules of Professional Conduct, including the prohibition against representing adverse interests stated in Rule 5.1.

Where the successive clients are a public agency and a private client, the risk exists that power or discretion vested in public authority might be used for the special benefit of a private client. A lawyer should not be in a position where benefit to a private client might affect performance of the lawyer's professional functions on behalf of public authority. Also, unfair advantage could accrue to the private client by reason of access to confidential government information about the client's adversary obtainable only through the lawyer's government service.

When the client is an agency of one government, that agency should be treated as a private client for purposes of this Rule if the lawyer thereafter represents an agency of another government, as when a lawyer represents a city and subsequently is employed by a federal agency.

Paragraph (B) operates only when the lawyer in question has knowledge of the information, which means actual knowledge, it does not operate with respect to information that merely could be imputed to the lawyer.

Paragraphs (A) and (C) do not prohibit a lawyer from jointly representing a private party and a government agency when doing so is permitted by Rule 5.1 and is not otherwise prohibited by law.

Paragraph (C) does not disqualify other lawyers in the agency with which the lawyer in question has become associated.

ETHICAL CONSIDERATIONS
IN STATE GOVERNMENT

INDEX

Advisory Opinions:

Legislative Ethics Committee:	.
Disqualifications	2
Factors affecting	
independence of judgment	2
General Assembly committees	5
Legislators	5
Specific questions	6
N.C. Board of Ethics	43, 63-64

Attorneys:

Action as a public official	130-131
Contact with officials	130
Firm names and letterheads	129-130
Government and private employment	131-132
Misconduct	129
Statements concerning judges	131
Statements of Economic Interest	42

Bribery:

Contracts and purchases	118
Legislators	1
Public officials	103

Business Associations:

Employee and Employer--see that heading	
Statements of Economic Interest--see that heading	

Complaints--see Investigations

Confidentiality:

Legislative communications	2, 29-31
State officers and employees	106-107

Contracts and Purchases:

Acceptance of bribes	118
Diversion of State appropriations prohibited	119
Duties owed employers	108-109
Gifts and favors regulated	114-115
Officers in sources of supply	118
Private benefit	118
Trading supplies	119
Transportation employees	116-117

Crimes:

Bribery	1, 103, 118
Contracts and purchases	114-115, 118
Embezzlement	102
Employee and employer	108, 113
Extortion	103, 125
Felonies and misdemeanors	101
Fraud	102
Gifts and favors	40, 114-115, 125
Hatch Act violations	122-124
Hobbs Act violations	125
Legislators	1, 29
Misconduct in public office	104-108, 113, 119-
Motor vehicles	108, 120
Political activity	121-124
Strikes by public employees	110
Transportation employees	116-117

Debts--see Indebtedness

Elections--see Political Activity

Embezzlement:

Property received in office or employment	102
State property	102
Taxes	102

Employee and Employer:

Acting as agent for suppliers	107
Acting as officer before qualifying	104
Bargains for employment:	
Buying and selling public offices	104, 113
Hatch Act violations	122-124
Legislators	1
Duties owed employers	108
Embezzlement	102
Strikes by public employees prohibited	110
Successive employment:	
Attorneys	131-132
State employees	40, 65
Transportation employees	117

Ethics:

Attorneys	42, 129-132
Executive Branch	39-69
Judicial Branch	73-98
Legislative Branch	1-35

Executive Branch:

Conflicts of interest defined	54-55
Executive Order Number One (1/31/85)	39-45
Honorariums	69
N.C. Board of Ethics--see that heading	
Statements of Economic Interest--see that heading	

Extortion:	
Criminal law violations	103
Hobbs Act violations	125
Federal Law:	
Hatch Act	122-124
Hobbs Act	125
Fraud:	
Extortion	103
Fraudulent use of telecommunication services	102
General Assembly--see Legislative Branch	
Hatch Act	122-124
Hobbs Act	125
Honorariums:	
Contractors, subcontractors, and suppliers	114-115
Non-State employees	69
State employees	69
Indebtedness:	
Debts owed to the State:	
Educational employees	32-33
Legislators	5, 34
Public officials	33-34
Statements of Economic Interest--see that heading	
Investigations:	
Debts owed to the State	34
Judicial Standards Commission	88-89, 93
Legislative Ethics Committee	5-6, 34
N.C. Board of Ethics	43, 65-67
Judicial Branch:	
Financial statements	83
N.C. Code of Judicial Conduct--see that heading	
Judicial Standards Commission--see that heading	
Judicial Standards Commission:	
Creation	87
Investigations	88-89
Rules	91-96
Supreme Court review of recommendations	97-98

Legislative Branch:

Bribery	1
Confidentiality	2, 29-31
Conflicts of interest	2
Corrupt practices in elections	29
Debts owed to the State	5, 34
Disqualifications	2
Duties and privileges:	
Advertising	17
Attendance and voting:	
House	19-20, 29
Senate	21-22, 29
Copying	17, 27
Fax machine	27
Mail and postage	17, 24-25
Stationery	17, 27
Telephone	17, 25-27
Economic threats	
Legislative Ethics Act	1-6
Legislative Ethics Committee--see that heading	
Statements of Economic Interest--see that heading	

Legislative Ethics Committee:

Advisory Opinions:	
Disqualifications	2
Factors affecting	
independence of judgment	2
General Assembly committees	5
Legislators	5
Specific questions	6
Creation	4-5
Investigations	5-6, 34
Legislative Ethical Principles & Guidelines	5, 17
Powers and duties	5
Studies and reports	6

Motor Vehicles:

Mileage allowance	120
Private use of public vehicles	108
Private vehicle expenses	108

N.C. Board of Ethics:

Advisory opinions	43, 63-64
Conflicts of Interest Interpretive Memorandum	54-55
Creation	39, 57-59
Duties	43-44
Exemptions	40
Jurisdiction	39-40
Rules	43, 57-67
Studies and reports	43-44

N.C. Code of Judicial Conduct:

Allowed activities	80-83
Disqualification	79-80
Financial activities and reports	81-83
Impartiality and diligence	73
Impropriety	73
Integrity and independence	73
Media coverage	74-78
Political activity	84-85
Procedures for removal from office	87-89

N.C. State Bar Rules of Professional Conduct

129-132

Political Activity:

Hatch Act	122-124
Judges	84-85
Legislators:	
Expulsion for corrupt practices	29
Use of official stationery	17
Removal from office	121
State employees	111
Transportation employees	116
Voter intimidation	121

Public Officials:

Attorney contact with officials	130
Attorney holding public office	130-131
Bargains for office	104, 113
Bribery	103
Debts owed to the State	33-34
Embezzlement	102
Gifts and favors	40, 114-115, 125
Honorariums	69, 114-115
N.C. Board of Ethics jurisdiction	39-40
Misconduct in public office	104-108
Misuse of confidential information	106-107
Motor vehicles:	
Mileage allowance	120
Private use of public vehicles	108
Private vehicle expenses	108
Removal from office	121
Successive employment	40, 65
Transportation officials:	
Falsifying highway inspection reports	117
Malfeasance	116
Profiting from official position	117
Prohibited employment	117
Use of position to influence elections	116

Rules of Professional Conduct:	
Code of Legislative Ethics	1-2
Judicial Standards Commission Rules	91-96, 97-98
Legislative Ethical Principles & Guidelines	17
N.C. Board of Ethics Rules	43, 54-55, 57-67
N.C. Code of Judicial Conduct	73-85
N.C. State Bar Rules of Professional Conduct	129-132
State Employees:	
Bargains for employment	113, 122-124
Contracts and purchases:	
Acceptance of bribes	118
Gifts and favors regulated	114-115
Officers in sources of supply	118
Private benefit	118
Debts owed to the State:	
Educational employees	32-33
Public officials	33-34
Diversion of State appropriations	119
Duties owed employers	108-109
Embezzlement	102
Gifts and favors	40, 114-115, 125
Honorariums	69, 114-115
Misuse of confidential information	106-107
Motor vehicles:	
Mileage allowance	120
Private use of public vehicles	108
Private vehicle expenses	108
Political activity:	
Allowed activities	111
Hatch Act	122-124
Voter intimidation	121
Statements of Economic Interest--see that heading	
Strikes prohibited	110
Successive employment	40, 65
Trading supplies prohibited	119
Transportation employees:	
Falsifying highway inspection reports	117
Malfeasance	116
Profiting from official position	117
Prohibited employment	117
Use of position to influence elections	116

Statements of Economic Interest:**Executive Branch:**

Claims of privacy	43-44, 61-62
Conflicts of interest defined	54-55
Contents	40-43
Executive Order Number One (1/31/85)	39-45
Filing requirements	40-43, 59-62
Sample forms	47-53
Supplemental Statements	62
Judicial Branch--financial statements	83
Legislative Branch:	
Definitions	1
Filing requirements	2-4
Sample forms	8-15

Strikes--prohibited	110
----------------------------	-----

Studies and Reports:

Failure to make reports	104
Falsifying highway inspection reports	117
Legislative Ethics Committee	6
N.C. Board of Ethics	43-44

Voting--see Political Activity	
---------------------------------------	--

